

United States
Circuit Court of Appeals

For the Ninth Circuit.

In the Matter of W. N. RUSSELL, Bankrupt.

THE SCANDINAVIAN AMERICAN BANK
OF BIG TIMBER, MONTANA, a Corpora-
tion,

Petitioner,

vs.

JOHN G. ELLINGSON, Trustee for the Bankrupt,
W. N. RUSSELL, Doing Business Under the
Name of W. N. RUSSELL LUMBER COM-
PANY, and W. N. RUSSELL, as an In-
dividual,

Respondent.

**TRANSCRIPT OF RECORD IN SUPPORT OF
PETITION FOR REVISION**

Under Section 24b of the Bankruptcy Act of Congress, Approved
July 1, 1898, to Revise, in Matter of Law, a Certain Order
of the United States District Court for the
District of Montana.

*In the District Court for the United States, in and
for the District of Montana.*

BANKRUPTCY.

In the Matter of W. N. RUSSELL, Doing Business
Under the Name and Style of W. N. RUS-
SELL LUMBER COMPANY and W. N.
RUSSELL as an Individual.

At Livingston, Montana, in said District, on the
— day of October, 1916, before E. M. Niles, one of
the referees in bankruptcy of said court, E. J. Moe,
W. N. Russell, J. G. Ellingson, Frank Arnold and
J. Loving, of the counties of Sweet Grass and Park,
State of Montana, being duly sworn and examined at
the time and place above mentioned, upon their
oathes testified as follows :

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Testimony of E. J. Moe, for Petitioner.

[a-2] Examination of witness, E. J. MOE, by Mr. J. F. O'CONNOR and Mr. CHARLES CAMPBELL, attorneys for the Bank.

Q. You may state your name and residence.

A. E. J. Moe, Big Timber, Montana.

Q. What official position do you hold, if any, in connection with the Scandinavian-American Bank of Big Timber, during the year 1915?

A. Was holding position of cashier.

Q. What is the nature of the institution known as the Scandinavian-American Bank of Big Timber?

A. It is a banking institution.

Q. Are you familiar with the organization of that bank? A. I am.

Q. Under the laws of what State was it organized?

A. Under the laws of the State of Montana.

Q. Has the Sandinavian-American Bank of Big Timber received authority from the State Bank Examiner of the State of Montana to do a banking business?

A. Received its charter to do a banking business in 1914.

Q. Where is the principal place of business of this bank?

A. On McLeod Street, Big Timber, Montana.

Q. When were you first connected with the Scandinavian-American Bank of Big Timber, and what position did you occupy?

A. From January 1st to May 14th, 1914, I was organizer of the institution, and on May 14th, we

(Testimony of E. J. Moe.)

opened the bank, but before opening for business we held our stockholders' meeting and I was elected cashier.

Q. How long did you hold the position of cashier?

A. Until January 1st. I am not positive but it was at our annual stockholders' meeting last January, I was elected vice-president. I think it was the first Tuesday in January.

[a-3] Who was your successor into the office of cashier of the bank? A. Jay Loving.

Q. Who is cashier of the Scandinavian-American Bank at this time? A. Jay Loving.

Q. Has he held that position continuously from the time he was elected until the present time?

A. He has held the position since our annual meeting in January last.

Q. Are you personally acquainted with W. N. Russell? A. I am.

Q. When did you first become acquainted with him?

A. The first time I knew Mr. Russell was in 1912, I believe, while I was in the Citizens State Bank.

Q. While you were cashier of the Scandinavian-American Bank did you, as an officer of that Bank, transact any business with W. N. Russell?

A. I did.

Q. When was the first business transacted with W. N. Russell?

A. I cannot say positively, but I think it was shortly after we opened up; that was in May, 1914; cannot say positively it was in May, but I know it was

(Testimony of E. J. Moe.)

not very long after we started doing business.

Q. Did the Scandinavian-American Bank, while you were occupying the position of Cashier, make any loans to W. N. Russell? A. We did.

Q. Are you familiar with the loan of \$4,165 that was made to W. N. Russell on the 29th day of June, 1915?

A. I am familiar with the loan at that time, but I think Mrs. Russell signed the note with him. I think her name is Chloe M. Russell.

[a-4] Q. In handing you the claim of the Scandinavian-American Bank of Big Timber, which was filed with E. M. Niles, Referee in the above matter, I will ask you if Exhibit C which is attached to that claim, is a true and correct copy of the original note that was given by W. N. Russell and Adella J. C. Russell to the Scandinavian-American Bank of Big Timber, on June 29, 1915? A. It is.

Q. What were the circumstances incident to the making of the loan?

A. Mr. Russell had borrowed money from us from time to time, and we had quite a number of notes in the pouch and practically all of them were past due, and knowing Mr. Russell's condition, that he was owing quite a bit besides what he owed us, we got Mr. Russell in there one day and took a note for the full amount of his indebtedness to us at that time, which was also secured in chattel and real estate mortgage, and told him that we would be willing to carry him for this money; that we would like to see him make out and we would be willing to carry him as long as he kept his stock up in shape and his business was

(Testimony of E. J. Moe.)

done, and that it was perfectly agreeable to us that he pay off the other creditors, as long as he did not run his stock down and took care of his business.

Q. At the time this note of \$4,165 was made to the Scandinavian-American Bank, was there any money advanced to W. N. Russell, in addition to the amount that he was already owing to the Bank?

A. There was.

Q. Do you know the amount that was advanced at that time?

A. I cannot say positively, but several hundred dollars. I think about every attorney in town was trying to jump on the man with bills and we tried to help him out in two or three cases.

[a-5] Was there any security given for the note of \$4,165? A. There was.

Q. What security was given?

A. Real estate mortgage on the lots and a chattel mortgage on the stock of lumber, lime, cement, coal, etc.

Q. Was the real estate mortgage on the lots and chattel mortgage on the stock in trade and merchandise? A. Yes.

Q. Do you know the description of those lots?

A. I don't know as I could give them offhand.

It is admitted that the certified copy of the chattel mortgage and the original real estate mortgage, attached to the proof of claim, should be admitted in evidence and the records show that the copy of the note of \$4,165 is admitted in evidence, without objection having been attached to the proof of claim, as a

(Testimony of E. J. Moe.)

true and correct copy of the original given to the Scandinavian-American Bank.

Q. How much did W. N. Russell and Adella J. C. Russell owe to the Scandinavian-American Bank at the time of the execution of the note of \$4,165, on the 29th day of June, 1915?

A. That was the total amount of his indebtedness, with the exception of the note of \$159, which he endorsed or signed with his brother.

Q. Will you state in figures, the amount of money that was owing to the Bank on the 29th day of June, 1915, by W. N. Russell. A. \$4,165 and interest.

Q. Has any amount ever been paid on that note?

A. There has not.

[a-6] Q. Has anything been paid by W. N. Russell or anyone in his behalf? A. There has not.

Q. Who is the owner and holder of that note for \$4,165 at the present time?

A. The Scandinavian-American Bank is the owner and holder of it.

Q. I will call your attention to Exhibit D attached to the claim of the Scandinavian-American Bank on file herein, and ask you if that is a true and correct copy of the note that was given to the Scandinavian-American Bank on the 30th day of June, 1915?

A. Yes, it is.

Q. What is the amount of that note?

A. \$125.

Q. Was the consideration for which that note was given advanced to W. N. Russell? A. It was.

Q. I will call your attention to Exhibit "E" at-

(Testimony of E. J. Moe.)

tached to the claim of the Scandinavian-American Bank on file herein, and ask you if that is a true and correct copy of a note that was given to the Scandinavian-American Bank by W. N. Russell and C. B. Russell on the 2d day of December, 1915?

A. It is.

Q. What is the amount of that note?

A. \$170.

Q. Was the consideration for which that note was given advanced and given to W. N. Russell?

A. It was given to W. N. Russell and C. B. Russell.

Q. I will call your attention to Exhibit "F" attached to the claim of the Scandinavian-American Bank, on file herein, and ask you if it is a true and correct copy of the note which [a-7] was given to the Scandinavian-American Bank of Big Timber on December 17, 1915? A. It is.

Q. What is the amount of that note?

A. \$170.

Q. Was the consideration for which this note was given, advanced and turned over to W. N. Russell?

A. It was.

Q. Is W. N. Russell and Warren N. Russell one and the same person? A. They are.

Q. I will ask you who is the owner and holder of the notes that I have just called your attention to, viz.: Exhibits "D," "E" and "F," attached to and made a part of the claim of the Scandinavian-American Bank herein?

A. The Scandinavian-American Bank is the owner

(Testimony of E. J. Moe.)

and is in possession of them.

Q. Has Mr. Russell paid any part of any one of these notes?

A. I think that he has. He of course paid the interest on the other notes that he had which he took up.

Q. Do the endorsements that were made on the back of any or all of these notes show the correct amount that was paid on them? A. They do.

I would like now to offer in evidence Exhibits "D," "E" and "F," which are attached to and made a part of the claim of the Scandinavian-American Bank, on file herein.

The Trustee and Objectors object to the reception in evidence of Exhibits "D," "E" and "F," part of the proof of claim herein, insofar as they are intended to be offered for the [a-8] purpose of proving additional advances under the provisions of the chattel mortgage, and particularly insofar as they are in excess of the sum of \$4,165, the amount of the principal note described in the chattel mortgage and interest up to the date of the filing of the claim. There is no objection to the notes or exhibits particularly mentioned being received in evidence insofar as they are assembled for the purpose of simply proving the claims of those notes as an ordinary credit.

Exhibits "D," "E" and "F" are admitted in evidence, subject, however, to the provisions and conditions of the mortgages given to secure the same.

Q. I will ask you what amount was secured by the real estate mortgage which was given as security for

(Testimony of E. J. Moe.)

the note of \$4,165? A. \$4,165.

Q. What amount of money was secured by the chattel mortgage which was given to secure the note of \$4,165?

A. \$4,165 and the advance of \$250.

Q. Was the amount of money equal to or in excess of \$250 given to W. N. Russell by way of future advances after the execution of the note of \$4,165?

A. There was some money advanced to Mr. Russell after the execution of the note of \$4,165 in excess of \$250.

Q. Was the real estate mortgage and the chattel mortgage, which were given to the Scandinavian-American Bank as security for the one note of \$4,165?

A. They were, and the chattel mortgage included \$250 additional.

[a-9] Cross-examination by Mr. ARNOLD, for the Trustee and objecting creditors.

Q. Mr. Moe, you were the cashier of the Scandinavian-American Bank from the time of its organization, or rather from the time it commenced to do business May 4, 1914, up to its annual meeting in January, 1916, when you were elected vice-president?

A. Yes.

Q. Now, during the time you were cashier of the bank you had active management and control of the officers of the Bank? A. I did.

Q. And all loans and credits were given by your authority and were under your jurisdiction?

A. No, sir.

(Testimony of E. J. Moe.)

Q. Who else made these loans and credits besides you?

A. On all loans, with the exception of very small loans, we have a Discount Committee, who has to be consulted on all loans.

Q. Were you a member of the committee?

A. I have been ever since the organization of the bank and am a member of it now.

Q. As a member of the Discount Committee and as the cashier of the bank, you passed on these loans to W. N. Russell? A. Yes, sir; I did.

Q. As cashier of the bank, Mr. Moe, you are familiar with the accounts of the customers of the bank, and particularly you would be familiar with the account of W. N. Russell?

A. Yes, I would be, up to the time that Mr. Loving went in as cashier, since which time I have not paid as close attention.

Q. But up to January, 1916, when you were promoted, you were familiar with the account of Russell? A. Yes, very.

[a-10] Q. And you were attentive to and kept close track of all that went through that account?

A. Pretty close.

Q. Now, the account of W. N. Russell Lumber Company and W. N. Russell was kept in one account at your bank?

A. W. N. Russell owned the company.

Q. Was it carried in the name of the company?

A. It was carried in three or four different ways.

Q. The account was kept in your books under one

(Testimony of E. J. Moe.)

heading? A. Yes, sir.

Q. Drawing your attention to the note of June 29, 1915, for \$4,165, marked Exhibit "A" and a part of the proof, was that transaction closed and completed with Mr. Russell by you?

A. It was closed and completed by Mr. Russell, myself, Mr. Loving and Mr. Franklin.

Q. When you speak of it being closed with those three, do you mean that those are the three persons who were there when the note was executed?

A. They were the three persons there at the time we agreed to let Mr. Russell have the money.

Q. When it came to the actual execution of the papers, who was it that completed that transaction?

A. Mr. Campbell and myself.

Q. Where were they executed?

A. The note was signed at the bank and it was taken to Mr. Campbell's office and he made the mortgage and signed before him.

Q. Who was it that agreed with Mr. Russell that this mortgage was to be given on behalf of the bank?

A. Mr. Franklin, Mr. Loving and myself.

Q. Were you three gentlemen what was known as the Discount Committee?

[a-11] A. No, we are not, but any three of the directors. Mr. Loving and Mr. Franklin were both directors of the bank at the time.

Q. Then I take it that pursuant to the agreement or demand of the three directors, including yourself, this chattel mortgage was made and executed?

A. The real estate and chattel mortgage.

(Testimony of E. J. Moe.)

Q. You stated on direct examination, Mr. Moe, that you had a number of notes in the pouch that were due and overdue? A. I did.

Q. This note of \$4,165 was given, was it not, to take up those notes?

A. Yes, it was taken in renewal and he got additional money at the time.

Q. Now, then, did the \$4,165 cover, at the time, the note was given, all of the indebtedness at that time?

A. All with the exception of the note that he had signed with his brother.

Q. Interest and everything? A. Yes, sir.

Q. And it covered an additional advance that was made to him at the time?

A. The additional advance was not made to him on that day.

Q. I thought I understood you to say that it was.

A. The chattel mortgage calls for the additional advance of \$250.

Q. I am not referring to that additional advance of \$250. I am referring to the additional advance necessary to make up the \$4,165 in addition to the notes that you had in the pouch which were due, with interest.

A. When Mr. Russell executed this note for \$4,165, it was to take up all outstanding indebtedness in the way of notes and everything he owed the Bank, including interest.

[a-12] Q. And there was an additional sum, as I understand it, that was given to him to make up the \$4,165.

(Testimony of E. J. Moe.)

A. It was given him to take up the indebtedness due the Bank at that time. I cannot say as to the advance at that time.

Q. What he owed the bank at that time, including interest, and this two or three hundred dollars, made up the total of \$4,165? A. Yes.

Q. Have you any means of definitely ascertaining or telling us now what that sum was that was given him to make up the \$4,165?

A. No, sir; I cannot tell now, but I can tell from our books.

Q. Have you got your books with you?

A. No, I have no books to show.

Q. Haven't you got Mr. Russell's ledger account with the Bank? A. Yes.

Q. Then you have it here, have you not?

A. Yes.

Q. Then I will ask Mr. Campbell to produce it. Now, I ask for the production of everything that you have at the present time, either in your custody or in Mr. Moe's custody, with reference to the account of the Russell Lumber Company and anything with reference to the giving of this \$4,165 note that will show how the amount was made up.

Q. Now then, Mr. Moe, what is that you have in your hand at the present time?

A. It is Mr. W. N. Russell's account with the Scandinavian American Bank, that is, the ledger sheets that are taken from our individual ledger that carries our customers' checking accounts.

Q. That will show the checking account of the

(Testimony of E. J. Moe.)

Russell or Lumber Company? A. Yes.

[a-13] Q. From what date, Mr. Moe?

A. These sheets are from the 7th day of May, 1915, down to the 7th day of October, 1916.

Q. And those sheets are a part of the records of your Bank? A. Yes.

Q. And these are the sheets that were kept in the bank in the regular course of business of the bank?

A. Yes.

Q. The amount that was given to Mr. Russell at the time of the execution of this mortgage and note of June 29th, 1915, over and above the amount of his then existing indebtedness to the bank, how was that given to Mr. Russell?

A. I think he was given credit for it to take care of the check that he had given for coal.

Q. And whatever item it was was placed to his credit on the ledger that you now have with you. Now, can you refer to that ledger under date of June 29th, 1915, and state what that amount was?

A. On June 29th, 1915, Mr. Russell got credited with a deposit of \$300 and a deposit of \$200.16. I cannot state which one of those it was he got additional, but I am inclined to believe it was the \$300.

Q. And that \$300 being placed to his account was used in the ordinary course of his business and to take care of a check that was outstanding, is that correct?

A. He used the money to pay other creditors.

Q. A creditor that was existing at the time that this loan was made? A. Yes.

(Testimony of E. J. Moe.)

Q. And that was done with your knowledge and your consent as an officer of the bank?

A. Yes.

[a-14] Q. Letting him have the money?

A. No, paid a portion of the money to the creditors then existing.

Q. Now then, you stated, Mr. Moe, in your direct examination that this transaction of the \$4,165 was made because you knew of his embarrassed condition at that time?

A. I do not think I made any such statement.

Q. Well, you stated, did you not, in substance, there were a number of notes in the pouch, and knowing of his condition, this transaction was completed. A. I do not think I did.

Q. You want it to be understood this time, that you did not, on direct examination by Mr. Campbell, when he asked you to relate the circumstances incident to making this loan, make the statement that you knew of his condition, or knowing of his condition, or words to that effect? A. I did not.

Q. At that time I think you stated that every attorney in Big Timber was jumping on him?

A. No, I did not say it at that time.

Q. Well, it was after that time, was it Mr. Moe, that every attorney in Big Timber was jumping on him? A. Yes, I think it was.

Q. That condition existed, did it Mr. Moe, during the period of time from June 29th, 1915, until January, February or March, 1916? After the big loan had been made, the longer it ran after that, the worse

(Testimony of E. J. Moe.)

it got and the more attorneys in Big Timber and Livingston were after Mr. Russell to obtain money?

A. Yes.

Q. You were aware of this as an officer of the Scandinavian American Bank? A. Yes.

[a-15] They came in and consulted you, did they not, as to how they could get money? A. Yes.

Q. Mr. Campbell was also trying to collect money from him, was he, during the period this chattel mortgage was given? A. Yes.

Q. Mr. Campbell was your attorney and a stockholder and a director of your bank? A. Yes.

Q. During the period following June 29th, 1915, and up to the present time? A. Yes.

Q. Now, Mr. Moe, you stated that the understanding was, when this chattel mortgage was given and this loan made, that Mr. Russell was to keep his stock in shape and keep it up and do business right?

A. We told him that was about as strong as we could possibly go with him, and he would have to try to conduct his business a little better and we would be glad to stay with him as long as he was attending to his business and taking care of his outstanding creditors and that we were willing to carry him.

Q. You mean the creditors that were in existence at the time this mortgage was given?

A. The creditors he had outside of the bank.

Q. Did you make any inquiry from him as to how much was owing at that time to his creditors outside of the bank?

A. I do not remember whether he made us a state-

(Testimony of E. J. Moe.)

ment at that time or not.

Q. Do you know whether you made any inquiry of him?

A. I think we did, we talked it over.

Q. And the understanding also was at that time that after the giving of the chattel mortgage, he was to keep his [a-16] stock up and not permit it to run down?

A. Naturally when a bank owns chattel property, they want a man to take care of it.

Q. You stated that he was to pay off his other creditors, which he testified to, that was to be done out of the proceeds of his sales of merchandise from time to time subsequent to the giving of that mortgage?

A. We told him to take care of his bills.

Q. But he was to take care of his bills to his creditors, was he not, out of his daily business?

A. Yes.

Q. And that was the only way he had of taking care of it out of his lumber business?

A. Yes, excepting a farm he owned.

Q. That was not to run his business, was it?

A. I think that ran part of his business.

Q. Drawing your attention to Exhibit "D," the note dated June 30th, 1915, for \$125, that would be the date of this chattel mortgage would it not?

A. I think so.

Q. Can you tell me from the ledger account of Mr. Russell whether that \$125 was placed to his credit?

(Testimony of E. J. Moe.)

A. There was a credit to his account on June 30, 1915, of \$125.

Q. Now then, drawing your attention to Exhibit "E," the note dated December 2d, 1915, for \$170.90, that was signed by W. N. and C. B. Russell?

A. Yes.

Q. On your direct examination, you stated that the money for that was given to W. N. and C. B. Russell? A. Yes.

Q. Do you remember the transaction?

[a-17] In the first place it was a note that his brother had at the Citizens' Bank, and we let him have the money and W. N. signed it with him, and it was renewed two or three different times.

Q. This was the last renewal of it? A. Yes.

Q. Then Mr. W. N. Russell, on December 2d, 1915, received no part of that \$170.90? A. No.

Q. And as far as you know, W. N. Russell received no part of it; it was an obligation of C. B.'s at the Citizens' State Bank?

A. I do not know which one of them received the benefit. They ran an account with us as W. N. & C. B. Russell, and I think they got credit for it at that time.

Q. No part of that has ever been paid to either W. N. or C. B. Russell? A. No.

Q. You do not claim that as one of the advances made under the provisions of the chattel mortgage, do you? A. I do not think so.

Q. Now, drawing your attention to Exhibit "F," the note dated December 17, 1915, for \$170, will you

(Testimony of E. J. Moe.)

refer to the ledger account of Mr. Russell and advise me whether that \$170.90 was placed to his credit with the bank?

A. On December 17, 1915, W. N. Russell received credit for \$170.90.

Q. The note, Exhibit "F," bears on the back of it, Mr. Moe, under date of January 7, 1916, an endorsement of \$50.00 on the principal. Can you tell me how that was paid?

A. I cannot tell by these sheets.

Q. What was the purpose, Mr. Moe, of making this note Exhibit "C" for \$4,165 a demand note?

[a-18] A. Well, a demand note is usually taken in the case of mercantile business.

Q. You want it to be understood, then, that the merchants who borrow from banks usually have to give demand paper?

A. The banks usually prefer it.

Q. What was the purpose of making the interest payable semi-annually with a demand note?

A. I think the note was made for a year, and at that rate of interest we insist on the interest being paid semi-annually. Unless we demand payment of principal, we demand interest, payable semi-annually.

Q. What was the purpose of putting the clause in there that interest should only be paid semi-annually? A. It is to be paid semi-annually.

Q. Did you or did you not deviate from the regular custom of the bank when you made the interest on this demand note payable semi-annually?

(Testimony of E. J. Moe.)

A. No, sir.

Q. Now, on January 7, 1916, when you made that endorsement of \$50 on this note, Exhibit "F," why was the endorsement made on the last note that was given instead of on the \$4,165 note?

A. Because I think that that note was taken for two weeks, or some such matter.

Q. The large note was even shorter than that, was it not?

A. It was a demand note. The large note was secured by a chattel mortgage. When a bank loans money, it is usually applied on the money that is advanced after the mortgage is taken.

Q. Now you stated, Mr. Moe, that you did not receive anything on this indebtedness at all, or the bank did not? A. Not on the \$4,165 note.

Q. You mean when you state that you did not receive anything [a-19] except the \$50 from W. N. Russell himself, you are of course not referring to anything that has been paid to your bank by the trustee in bankruptcy?

A. No, I am not considering that.

Q. Mr. Moe, have either you or Mr. Campbell in your possession here, or any of your attorneys, got any other papers that would show the account of W. N. Russell with Scandinavian American Bank except what you produced this morning?

A. I do not know whether Mr. Campbell has or not.

Q. Did you produce these accounts for Mr. Campbell yesterday?

(Testimony of E. J. Moe.)

A. Yes. He came in and called for them.

Q. Then I will ask Mr. Campbell; have you any other accounts with reference to the account of W. N. Russell in your possession?

A. All I think is the individual ledger sheets and a few cancelled checks that were not turned back to Mr. Russell.

Q. And the bank-book, have you got that?

A. No, I haven't it; he has that.

Direct Examination by Mr. CAMPBELL.

Q. I will ask you, Mr. Moe, was W. N. Russell insolvent at the time this mortgage of \$4,165 was made? A. Not to our knowledge.

Q. Did you make any investigation, or was any investigation made on behalf of the bank at that time, to determine the probable value of the stock on hand at the time the mortgage for \$4,165 was taken?

A. Yes.

Q. You may state in a brief way the nature of that investigation.

A. When Mr. Loving was down in the lumber yard, he checked over the yard. When he came back to the bank he reported to Mr. Franklin and myself.

[a-20] Q. What did the officials of the bank do?

A. The officials of the bank asked Mr. Loving for his report, and stated that we could take the loan.

Q. Was there any fire insurance on the stock and the buildings in the yard at the time this loan was taken?

A. There was \$5,200 insurance written on June 24th.

(Testimony of E. J. Moe.)

Q. Was there any further insurance placed on this property?

Objected to on the ground that it is incompetent, irrelevant and immaterial and not a proper method of estimating value.

Objection sustained.

Q. What representations, if any, did Mr. Russell make to you relative to his financial condition at the time that he negotiated this loan for \$4,165?

A. He represented to us that what he owed the bank was all he owed, with the exception of the additional amount we let him have at that time.

Q. Then, in other words, the additional amount over and above what he already owed to the bank at that time, would be sufficient to pay up all his outstanding indebtedness at that time?

Objected to on the ground that it is leading, calling for a conclusion of the witness, and is a matter for the court to pass on.

Objection sustained on the ground that it *leading* to the conclusion of the witness.

Cross-examination by Mr. ARNOLD.

Q. Now, you say, Mr. Moe, that Russell was not insolvent to your knowledge? A. No.

Q. Did you make any inquiry?

A. No, just what he told us. We certainly would not have loaned the money to him if we had known he was insolvent.

[a-21] Q. As a matter of fact, when you loaned him \$200 you were just securing yourself when you gave him this mortgage?

(Testimony of E. J. Moe.)

A. We had security before.

Q. What did you have before?

A. Chattel mortgages. I do not know their exact amounts.

Q. What did they cover?

A. Covered stock of lumber, coal, etc.

Q. Now you say there was \$5,200 insurance thereon. Do you know how that insurance was placed? A. Yes.

Q. Now, then, you state that at the time that you made this loan of \$4,165 and took the security and note, he told you that all that he owed was what he owed to the bank and that \$300 that you gave him additional on the 29th day of June, 1915?

A. Yes.

Q. When did he tell you that?

A. That day at the bank.

Q. Who to?

A. Mr. Loving, Mr. Franklin and myself.

Q. To what did you refer when you told him he was to take care of his creditors?

A. He would buy coal and let it run to the very last minute and then ask us for money to take care of it.

Q. Then you were not referring to any other creditors?

A. No. He owed \$300, which we advanced him at that time.

Q. When you said this morning that he was to take care of his other creditors, you meant creditors who were going to become creditors after this chat-

(Testimony of E. J. Moe.)

tel mortgage was given? A. Most certainly do.

Q. Not the creditors that were in existence prior to the giving and execution of this note and mortgage for \$4,165?

[a-22] A. The only creditor that he had at the time was?

Q. Have you read the chattel mortgage?

A. No, not recently.

Q. Did you read it at the time it was given?

A. Yes,

Q. You are familiar with its terms? A. Yes.

Q. You were then and are now an officer of the bank? A. Yes.

Q. I will draw your attention, Mr. Moe, to the chattel mortgage which is Exhibit "D" of the bank's proof of claim, and I will draw your attention to the clause in that chattel mortgage: "It is further agreed that the party of the first part may, from time to time, purchase new supplies of coal, lumber, cement, paints, oils and building material for cash or its equivalent to replenish and keep up said stock now on hand." You were familiar with that?

A. Yes.

Q. Now, then, Mr. Moe, providing that he was to pay cash or its equivalent for everything he purchased to keep up the stock in his yards, how did you expect him to have creditors that he was to take care of?

He surely would have creditors for a while.

A. Not if he owed nothing at all.

Q. If they shipped him a carload of coal, he neces-

(Testimony of E. J. Moe.)

sarily would have a creditor until he made payment.

A. Yes.

Q. Then your idea was Mr. Russell had a right to purchase merchandise to keep up the stock and obtain credit for a reasonable length of time under the chattel mortgage?

A. He necessarily would have to have a few days of credit [a-23] from the time the shipment was made to him.

Q. Before he got the merchandise?

A. I mean when they shipped the merchandise.

Q. Then you knew he was receiving merchandise to keep up the stock and he did not pay for it until after he got the merchandise and obtained credit for it? A. Coal is about the only thing he got.

Q. Did you not know, as a matter of fact, he bought and took lumber into his yard? A. No.

Q. Did you not make an examination of the lumber yard at the time this loan was made? A. No.

Q. Did you ever go near it afterwards?

A. Yes.

Q. Did you not see that there was lumber and other building materials added to the stock of merchandise? A. Yes.

Q. Now, then, as a matter of fact you expected him then to obtain credit for a period of time on each purchase that he made? A. Yes.

Q. Now, those are the only creditors who had to be taken care of?

A. What we wanted Russell to do was to pay for

(Testimony of E. J. Moe.)

the stuff he had got to replenish his stock; the stuff he would need.

Q. Did you ever make an investigation to see that he had? A. He reported to us that he had.

Q. Did you ever examine his books for that paper?

A. No.

Q. Did you ever have him give you a financial statement in writing? A. No. [a-24]

Q. Did you ever have him give you any statement on the 10th day of any month during this time the chattel mortgage was in force?

A. No, he did not in writing?

Direct Examination by Mr. ARNOLD.

Q. Mr. Russell, will you state your name?

A. W. N. Russell.

Q. You are the bankrupt in this case? A. Yes.

Q. You were doing business at Big Timber during the years 1914 and 1915? A. Yes.

Q. What name were you doing business under?

A. W. N. Russell Lumber Company.

Q. Not a co-partnership or anything, just you as the W. N. Russell Lumber Company?

A. The lumber business was done that way. I was doing other business.

Q. What business were you engaged in, Mr. Russell, at Big Timber? A. Lumber and coal.

Q. Cement, lime and such things?

A. All building materials.

Q. Now then, do you remember the time that you executed a chattel mortgage and a real estate mortgage to the Scandinavian American Bank at Big

(Testimony of E. J. Moe.)

Timber for \$4165, about June 29, 1915?

A. Yes, sir.

Q. That note and mortgages were executed at whose request?

A. At the request of the bank.

Q. Do you remember where it was executed?

[a-25] A. At Campbell's office.

Q. Do you know who was present at the time?

A. Yes, myself, my wife, Campbell, and Moe was there part of the time. It seems to me Loving was there for a while; cannot say he was there during the whole proceedings.

Q. Do you remember, Mr. Russell, what cash was given you at that time as part consideration for this mortgage?

A. No, not that I could say for sure.

Q. Have you any means of ascertaining just what that was?

A. Only by my pass-book and the two entries made in it on that day. I rather think it was \$300.

Q. And the balance of the \$4165 was made up of what, if you remember?

A. That was money I had received prior to this large note and was in the shape of other notes.

Q. Now, at the time that you gave this note to the Scandinavian American Bank and gave this security, were you indebted to any other person or persons?

A. Yes.

Q. Have you any idea for what amount at that time? A. About \$2,000.

(Testimony of E. J. Moe.)

Q. Who else did you owe, if you remember; did you owe any persons?

A. Yes. I cannot say who they were at that time.

Q. Now then, Mr. Russell, do you keep any books of accounts showing a list of your creditors?

A. No.

Q. Did you keep one at that time? A. No.

Q. What was your method of keeping your accounts of your creditors?

A. I filed the bills of lading of materials shipped.

[a-26] Q. How about the invoices?

A. That was practically the invoices with bills of lading. Those were the only accounts I kept.

Q. When you paid anything, state whether or not those invoices would be taken out of the bill file and put away as receipts? A. They were.

Q. Have you got any of those with you? A. No.

Q. What became of them?

A. They went with my books. The sheriff took them. He took the receipts.

Q. At the time that you executed this note and these two mortgages, the chattel and other mortgage, what if anything was said between you and Mr. Moe and whoever else was present, with reference to your other creditors that were in existence at that time?

A. Nothing whatever, as I remember. No talking over at all that I remember.

Q. Did you ever talk with Mr. Moe with reference to these creditors who were in existence at the time?

A. I did.

Q. Do you remember talking with him or any other

(Testimony of E. J. Moe.)

officer of the bank at the time this mortgage was executed? A. No.

Q. Did you talk with him afterwards, during the time the chattel mortgage was in existence?

A. Yes.

Q. About the creditors who were in existence before?

A. No. I asked for a letter from the Bank for creditors I talked to them about and about by coal that I had borrowed additional money for.

Q. You spoke to him from time to time about your creditors who [a-27] were asking and demanding money from you during the time the mortgage was in existence?

A. No. Not while this big mortgage was in existence.

Q. Did you ever discuss your creditors with him?

A. No.

Q. What was said at the time of the execution of this mortgage, either by Mr. Campbell or Mr. Moe, with reference to this chattel mortgage and what you were to do in connection with it?

A. They were both there when I asked if I should keep a record and daily account of what I was doing, and they said that would not be necessary, and I then asked them if I should come in the first of the month with statement of what I was doing, and they said no, that they would call for a statement when they wanted it.

Q. Did you ever, at any time, Mr. Russell, monthly between the tenth day of each and every month dur-

(Testimony of E. J. Moe.)

ing the life of this mortgage or any time, make any statement of your business dealings and your business as a lumber merchant to the Scandinavian American Bank in writing? A. No.

Q. Did you monthly make a verbal account to them of your receipts and disbursements and sales and collections made, giving them the figures at any time during the months this mortgage was in force?

A. No, not exactly a statement that way ever. Such things as they asked me about I told.

Q. Did they ever ask you what your sales had been for any particular month? How much paid out and collected and did you tell them? A. Yes.

Q. Where did you get the figures from?

A. My check-book always showed what I was paying out.

[a-28] Q. Now, then, did you keep any other books except your check-book as to what you were paying out? A. No.

Q. Did you at any time keep any book or other account of your daily receipts and sales?

A. No.

Q. Had you any means of ascertaining from books the amount of your sales during any particular month? A. No.

Q. What books of account did you keep?

A. The McClaskey System.

Q. And that McClaskey System is what? How is it kept?

A. It is in the order of a file. Each party gets a

(Testimony of E. J. Moe.)

space in that. A duplicate copy of the sale made them is kept in those files.

Q. In other words, Mr. Russell, if you sell John Jones a bill of goods, you make a bill out for it in duplicate. You give John Jones the duplicate and you put the original in the McClaskey File or books, under his particular name? A. Yes.

Q. And if John Jones buys any additional merchandise, you make a new bill or invoice of that and carry forward the old balance? A. Yes.

Q. And the system shows after each transaction what balance is due from any particular individual?

A. Yes.

Q. That is the correct system? A. Yes.

Q. That is the only thing that you did in the way of keeping accounts of the sales made to your different customers? A. Yes.

[a-29] Q. And the only accounts you did keep?

A. Yes.

Q. Now then, when you say that you made statements to Mr. Moe whenever they asked you as to your business, these statements, were they made at any particular time? A. No.

Q. They were not made in writing? A. No.

Q. How¹ did you get your figures, Mr. Russell, showing your sales made each day? How would you get those to give Mr. Moe?

A. From my McClaskey and check-book.

Q. Did you make it out and take it to Mr. Moe or did you just guess at the figures?

(Testimony of E. J. Moe.)

A. No, I was never asked to give them an accurate account in dollars and cents.

Q. And you never did give them an accurate account either in writing or otherwise? A. No.

Q. You kept your bank account where?

A. With the Scandinavian American Bank.

Q. Subsequent to the 29th day of June, 1915.

A. Yes.

Q. In whose name did you keep it?

A. W. N. Russell.

Q. Did you keep an account in the Scandinavian American Bank in any other person's name?

A. No.

Q. When you made your deposits in the bank, did you at any time subsequent to the 29th day of June, 1915, deposit money in the Scandinavian American Bank or any other bank to the credit of the Scandinavian American Bank? A. No.

[a-30] Q. The proceeds and the receipts of your business from sales and moneys collected after deducting the necessary expense of carrying on your business and for the payment of current bills, where were they deposited, Mr. Russell?

A. In the Scandinavian American Bank.

Q. To whose credit? A. W. N. Russell.

Q. All of this money that was deposited in the Scandinavian American Bank to the credit of W. N. Russell, who was it checked out by?

A. W. N. Russell.

Q. On checks signed by whom?

A. W. N. Russell.

(Testimony of E. J. Moe.)

Q. By anybody else? A. No.

Q. After these amounts that were deposited in the Scandinavian American Bank to your credit subsequent to the giving of this chattel mortgage on the 29th day of June, 1915, were any of the moneys deposited applied on the payment of this \$4165 note?

A. No.

Q. Or to any other note that you gave to the bank that was covered by this mortgage? A. No.

Q. Now, at the time, Mr. Russell, that you made any statement or statements to Mr. Moe or the officers of the Scandinavian American Bank, whoever they were, did you or did you not, at such times, have an adjustment or make a balance and pay over to them any balance that there might be due to them out of your sales and collections? A. No.

Q. And there were moneys on hand at the times that you discussed these statements with them?

[a-31] A. Yes.

Q. Now, Mr. Russell, did you, during the time that this mortgage was in force, subsequent to June 29th, 1915, and that time you went out of business, sell goods and merchandise consisting of lumber, cement and other materials to your regular and other customers? A. Yes.

Q. State whether or not there are some of the customers to whom you made sales subsequent to June 29th, 1915, that had not, up to the time that you went out of business, pay you for what they purchased from you? A. Yes.

Q. State whether or not, subsequent to the giving

(Testimony of E. J. Moe.)

of that chattel mortgage, you made any purchases of lumber or other materials to keep up your stock in the lumber-yard?

A. Yes.

Q. State whether or not, at all times, you paid cash or its equivalent, for the lumber or other materials so purchased? A. No.

Q. State whether or not, at the time you went out of business, some of these purchases that had been made, were not then paid for? A. Yes.

Q. Is this what is called the McClaskey system, Mr. Russell? A. Part of it.

Q. And this is the McClaskey system that was used by you? A. Part of it.

Q. The other part would be where?

A. At Big Timber.

Q. The part that is in Big Timber, would it have any of the accounts in it? A. I think not.

[a-33] Q. This part we have here then is what would contain the accounts of your debtors or any other customers at the time you went out of business?

A. Yes.

Q. Insofar as they were not paid? A. Yes.

Q. Those were turned over to the Sheriff, were they not, and as far as you know whose possession are they found in now?

A. The Sheriff's, as far as I know.

Q. Whose possession did you see them in last?

A. In the hands of the Trustee.

Q. Mr. Russell, state whether or not you made sales and collections daily during the time you were

(Testimony of E. J. Moe.)

in business, subsequent to June 29h, 1915, until petition was filed? A. I did.

Q. I draw your attention to objector's exhibit 1 and ask you what that is, Mr. Russell?

A. A check for \$262 given to G. B. Selter.

Q. What is the notation on the bottom of that, Mr. Russell?

A. On Western Lumber Company's note.

Q. Mr. J. B. Selter is what?

A. This check was given to Mr. Selter, lawyer, at Big Timber.

Q. And that was to apply on Western Lumber Company's account? A. Yes.

Q. State whether or not at the date that that check was given, it was given for the account that was owing prior to that date by you? A. It was.

Q. State whether or not that check was paid?

A. It was.

Q. State whether or not, Mr. Russell, that check was given to Mr. Selter before or after the execution of this chattel [a-34] mortgage and note on the 29th day of June, 1915.

A. It was after.

Exhibit 1 admitted in evidence.

Q. I draw your attention to Objector's Exhibit 2, and will ask you what that is?

A. Check C. W. Russell for \$60.

Q. What was that \$60 for?

A. A loan that I made at that time.

Q. I will ask you whether or not that check was made through the Scandinavian American Bank and

(Testimony of E. J. Moe.)

your account charged with it? A. It was.

Q. Who is Mr. C. W. Russell? A. A cousin.

Objection to introduction of Exhibit 2 on account of the fact that it has no connection with the business.

Q. You kept no cash book? A. No.

Q. The only account that you kept of your cash was on the stubs of your check-book? A. Yes.

Q. State whether or not that show your daily receipts or whether any book showed your daily receipts? A. No.

Q. What did the stubs of your check-book show?

A. Showed what each check was written for.

Q. State whether or not your deposits you made in the Bank as shown by the stubs of your check-book were the proceeds of your sales and collections subsequent to June 29, 1915, in your business?

A. No.

Q. Those deposits that you made in the Bank, as shown [a-35] by that stub, where did you get the money from then?

A. Some of this came from the ranch and some from other work outside of the yard.

Q. What other work? A. Team work.

Q. Can you tell how much teaming you were doing? A. No.

Q. Can you tell how much you got from the ranch?

A. No. All went in together.

Q. Then there was other money went into the Scandinavian American Bank other than the proceeds of the sales of your business? A. Yes.

(Testimony of E. J. Moe.)

Q. You have no idea how much?

A. No, I haven't.

Q. Now then, at the time this check of \$50 was given to your cousin, what did you have in the bank according to the stub of your check-book?

A. It shows a balance of \$74.45.

Q. Prior to the giving of the \$50 check, what was the balance? A. \$124.45.

Q. On the 30th day of June, 1915, the day you drew that check for your cousin, did you make a deposit?

A. Yes.

Q. Of how much? A. \$125.

Q. I will ask you whether or not, Mr. Russell, the \$125 deposit that you made on June 30, 1915, was the \$125 that you borrowed from the bank on June 30th, 1915, as shown by Exhibit "D," represented by a note signed by you on that date?

A. I think it was.

[4-36] Q. From your books will you state what that \$50 was paid out of?

A. From the stubs it shows it was paid from that loan and the \$24.45 balance that was in the bank.

Q. I will draw your attention to Exhibit #3 and ask you what that is, Mr. Russell?

A. Check for \$124.71 given to the Scandinavian American Bank.

Q. Will you turn to the stub?

A. Interest on notes.

Q. Have you any independent recollection of what interest that paid?

A. That must have paid on the notes that were

(Testimony of E. J. Moe.)

due and owing before the mortgage was drawn up, because after that I do not see where there could be any interest like that due on any notes. It must have been the interest on them was settled the day after the mortgage was drawn up.

Q. State whether or not that was paid out of moneys that were in the bank on June 30, 1915, deposited by you?

A. There was not enough in the bank at that time to pay it. It must have been put in and turned out the same day.

Q. State, Mr. Russell, when you gave that check for \$124.71 on June 30, 1915, whether there was, according to that stub, enough money to take care of it? A. The balance on June 30th was \$74.46.

Q. When, if at all, did you make a deposit sufficient to cover the difference between the \$74.46 and this check for \$124.71, dated June 30?

Objected to. Overruled.

(Stipulation signed by the attorneys and filed herein.)

[a-37] STIPULATION.

IT IS STIPULATED AND AGREED by and between the parties hereto that the following accounts, aggregating the sum of One Thousand Six Hundred Ninety-four and 95/100 Dollars (\$1,694.-95) are the accounts of merchandise sold in the general course of business, at retail, by W. N. Russell, in his business as a lumber dealer at Big Timber, Montana, subsequent to the 29th day of June, 1915, and prior to the time of the filing of the peti-

tion herein. That the persons to whom said merchandise was sold were the regular and other customers of said W. N. Russell and that at the time of the filing of the petition herein, said accounts and each of them were unpaid and owing to said W. N. Russell by said customers and persons named, and that said merchandise, so sold to said customers and persons, was out of the stock of goods, wares and merchandise covered by the provisions of the chattel mortgage of June 29th, 1915, given by said Russell to the Scandinavian American Bank, and also out of the merchandise thereof added to the original stock of merchandise of said W. N. Russell and purchased by said Russell to replenish and keep up the stock of merchandise in his lumber yard subsequent to the 29th day of June, 1915.

_____,

Testimony of W. N. Russell, in His Own Behalf.

W. N. RUSSELL, called as a witness in the above-entitled matter, having been first duly sworn, upon examination testified as follows.

Examination by Mr. ARNOLD.

Q. Drawing your attention, Mr. Russell, to "Exhibit No. 4," I will ask you what it is.

A. That exhibit is a check drawn for \$50 in favor of John Ellingson, life insurance.

Q. That was for life insurance, was it?

A. Yes, sir.

Q. And state whether or not that was an indebted-

(Testimony of W. N. Russell.)

ness incurred before you gave this chattel mortgage?

A. It was taken out before this.

Q. State whether or not this was a payment—

A. (Interrupting.) Yes, sir.

Q. —of the premium of insurance and an indebtedness due prior to the giving of this chattel mortgage?

A. Yes, sir.

Q. Mr. Ellingson is engaged in what business?

A. He is engaged in the insurance business.

Q. State where he lives?

A. At Big Timber, Montana.

Q. Do you remember whether or not you talked to Mr. Moe, or any officer of the bank with reference to the payment of this? A. No, sir.

Q. State whether or not that check was paid and your account charged with the amount of it? [1]

A. It was.

Mr. ARNOLD.—I offer this check, “Exhibit No. 4,” in evidence.

Mr. CAMPBELL.—We make the same objection to the introduction of this that we did to the other one.

The COURT.—The objection will be overruled.

Whereupon “Exhibit No. 4,” was received in evidence and is in words and figures as follows:

W. N. Russell Lumber Co. No. 0257, Big Timber, Mont. July 3d, 1915. Pay to the order of John Ellingson, \$50.00. Fifty and no/100 Dollars. W. N. Russell. To Scandinavian America Bank, Big Timber, Montana.

(Back) John G. Ellingson.

(Testimony of W. N. Russell.)

Q. Drawing your attention to "Exhibit No. 5," I will ask you what that is, Mr. Russell.

A. "Exhibit 5" is a check for \$100 in favor of the Montana Sash and Door Company.

Q. Now, I will ask you whether or not, Mr. Russell, that check for \$100 was given for a debt that was due prior to the giving of the chattel mortgage of June 29, 1915?

A. It was on an open account.

Q. On an open account, was that open account an indebtedness that was due prior to the giving of the mortgage on June 29, 1915?

A. No, that was paid when this indebtedness fell due.

Q. Well, but state whether or not it was a payment [2] for merchandise that was bought and in your—that was bought prior to June 29, 1915.

A. I cannot say whether it was or was not. I was buying from those people each week, you might say. And paying them every 30 days.

Q. During the life of this chattel mortgage?

A. Yes, sir. And before the mortgage.

Q. Drawing your attention to check dated July 3, 1915, payable to the Citizens State Bank—can you state what that was for, Mr. Russell?

A. For advertising.

Q. Drawing your attention to Exhibit No. 6, I will ask you what that is, Mr. Russell.

A. That is a check for \$100.

Q. And payable to whom?

A. Payable to Fletcher & Evans.

(Testimony of W. N. Russell.)

Q. And that check was given to Fletcher & Evans for what purpose, or for whom?

A. Payment of account for Lindstrom Handforth Lumber Co.

Q. And Lindstrom Handforth were who?

A. The Lindstrom Handforth Lumber Company.

Q. Of where?

A. Tacoma, Washington; I believe.

Q. State, if you know, who Fletcher & Evans were? A. Attorneys.

Q. Attorneys. State whether or not this account of the Lindstrom Handforth Lumber Company was in their hands for collection? A. It was. [3]

Q. Now, I draw your attention, Mr. Russell, to the remark on the bottom of the check, what remarks are those?

A. It is written on the check, check given for "On Lindstrom Handforth Bill."

Q. State whether or not that writing you have just read, those words you just read were on the check at the time it was sent to Fletcher & Evans?

A. They were.

Q. And at the time it was paid by the Scandinavian American Bank? A. They were.

Q. Now, state whether or not that hundred dollars was for merchandise purchased and in your yards prior to the 29th day of June, 1915, when this chattel mortgage was given—this check is dated July 6, 1915. A. I think it was.

Q. Did you have any talk with Mr. Moe with reference to the payment of this check at all?

(Testimony of W. N. Russell.)

A. None.

Mr. ARNOLD.—I offer this check in evidence, which is “Exhibit No. 6.”

Mr. CAMPBELL.—We offer the same objection.

The COURT.—The objection will be overruled.

To which ruling of the Court an exception was duly taken.

Whereupon “Exhibit No. 6” was received in evidence and is in words and figures as follows:

W. N. Russell Lumber Company, No. \$0265. Big [4] Timber, Mont., July 6th, 1915. Pay to the order of Fletcher & Evans, \$100.00. One hundred and no/100 Dollars. To Scandinavian American Bank, Big Timber, Mont. W. N. Russell. (Note) On Linstrom Hanforth Bill.

(Back) Fletcher & Evans, by R. E. Evans.

Lindstrom Handforth Lumber Co., T. J. Handforth, Treasurer. (And several clearing house stamps.)

Mr. ARNOLD.—Q. I'd like to ask you whether that one hundred dollars was paid by the Scandinavian American Bank and charged to your account?

A. It was.

Q. Now, drawing your attention to “Exhibit No. 7,” Mr. Russell, I will ask you to state what that is.

A. That is a check for \$60 to C. W. Russell.

Q. Can you tell what that was for, Mr. Russell?

A. I loaned him that.

Q. State whether or not the amount of this check was charged to your account and paid by the Scandinavian American Bank. A. It was.

(Testimony of W. N. Russell.)

Q. Where does C. W. Russell live?

A. His home is in—

Q. Where was he living at the time this check was given? A. He was returning to—

Q. State what relative he is to you, if any?

A. He is a cousin.

Q. Do you know whether or not he was acquainted with Mr. Moe? [5]

A. He had met Mr. Moe.

Mr. ARNOLD.—That check is offered in evidence, which is “Exhibit No. 7.”

Mr. CAMPBELL.—We object to it on the same ground as heretofore indicated.

The COURT.—The objection will be overruled.

To which ruling of the Court an exception was duly taken.

Whereupon “Exhibit No. 7,” was received in evidence and is in words and figures as follows:

W. N. Russell Lumber Co. No. 0267. Big Timber, Mont. July 7th, 1915. Pay to the order of C. W. Russell \$60.00. Sixty and no/100 Dollars. To Scandinavian American Bank, Big Timber, Mont. W. N. Russell. (Back) C. W. Russell, Tom kue.

Q. Drawing your attention to “Exhibit No. 8,” I will ask you what that is, Mr. Russell.

A. That is a check for \$50.

Q. Payable to whom?

A. Bellingham National Bank.

Q. And what, if you know, was that paid for?

A. That is on notes for lumber.

Q. To whom?

(Testimony of W. N. Russell.)

A. I do not just recall whose lumber that one did pay.

Q. State whether or not it was for lumber that was bought before the 29th of June, 1915, and in your yard? A. Yes, I think it was.

I offer this check, "Exhibit No. 8," in evidence.
[6]

Mr. CAMPBELL.—It is objected to on the same ground as heretofore indicated.

The COURT.—The objection will be overruled.

To which ruling of the Court an exception was duly reserved.

Whereupon "Exhibit No. 8" was received in evidence and is in the words and figures as follows:

W. N. Russell Lumber Co. No. 0268. Big Timber, Mont. July 9th, 1915. Pay to the order of Bellingham National Bank, \$50.00. Fifty and no/100 Dollars. To Scandinavian American Bank, Big Timber, Mont. W. N. Russell. (Back) Several *clearing*-house stamps.

Q. Now, drawing your attention to Exhibit No. 9, I will ask you what that is, Mr. Russell.

A. That is a check for \$10 in favor of C. W. Allen, Secretary.

Q. There is an endorsement on that, or notation on that, what notation is that? A. "Chautauqua."

Q. Was that notation on there at the time the check was given? A. Yes, sir.

Q. I will ask you what that word "chautauqua" meant?

(Testimony of W. N. Russell.)

A. That was a bunch of players giving a show in town.

Q. And state what the purpose of this \$10 was?

A. It was for the purpose of bringing them there.

Q. Was it a contribution to this chautauqua? [7]

A. Yes, sir.

Q. State whether or not that check was paid through the bank and the amount of it charged to your account. A. It was; yes, sir.

Mr. ARNOLD.—I offer this check, "Exhibit No. 9," in evidence.

Mr. CAMPBELL.—We make the same objection.

The COURT.—The objection will be overruled.

To which ruling of the Court an exception was duly reserved.

Whereupon Exhibit No. 9 was received in evidence and is in the words and figures to wit:

W. N. Russell Lumber Co. No. —, Big Timber, Mont., July 5, 1915. Pay to the order of C. W. Allen, Sec. \$10.00. Ten and no/100 Dollars. To Scandinavian American Bank, Big Timber, Mont. W. N. Russell. (Back) C. W. Allen, Treas. and clearing-house stamp.

Q. Drawing your attention, now, to "Exhibit No. 10," I will ask you what that is.

A. That is a check for \$50.

Q. Payable to whom? A. J. B. Selters.

Q. And will you refer to the stub of your check book and say what that was for?

A. On northwestern lumber.

Q. State whether or not that was an account tha

(Testimony of W. N. Russell.)

was owing for merchandise purchased prior to June 29, the date of the chattel mortgage? [8]

A. It was.

Q. And who is Mr. Selters?

A. He is an attorney.

Q. And where? A. At Big Timber.

Mr. ARNOLD.—I offer exhibit No. 10 in evidence.

Mr. CAMPBELL.—We object to it for the same reason, and we make the additional objection, if the Court please, because there is no showing concerning any of these checks introduced this morning to the effect that they were payable out of funds derived from the proceeds of the sale of any merchandise which is the subject of the controversy.

The COURT.—The objection will be overruled.

To which ruling of the Court an exception was duly reserved.

Whereupon "Exhibit No. 10" was received in evidence and is in words and figures as follows, to wit: W. N. Russell Lumber Co. No. 0273. Big Timber, Mont., July 14, 1915. Pay to the order of J. B. Selters, \$50.00. Fifty and no/100 Dollars. To Scandinavian American Bank, Big Timber, Mont. W. N. Russell. (Back) J. B. Selters.

Q. Drawing your attention to "Exhibit No. 11," I will ask you what that is, Mr. Russell.

A. That is a check for \$50 drawn in favor of the Eureka Lumber Company.

Q. What's the notation at the bottom of the check? A. On account. [9]

(Testimony of W. N. Russell.)

Q. State whether or not that \$50 was for merchandise purchased prior to the giving of the chattel mortgage? A. It was.

Q. Was that check paid to the Scandinavian American Bank and the amount of it charged to your account? A. Yes, sir.

Mr. ARNOLD.—I offer "Exhibit No. 11" in evidence.

Mr. CAMPBELL.—We make the same objection, and in addition we object to it on the ground that it is shown that it was given for the purpose contemplated in the mortgage.

The COURT.—The objection will be overruled. To which ruling of the Court an exception was duly reserved.

Whereupon "Exhibit No. 11" was received in evidence and is in words and figures as follows, to wit:

W. N. Russell Lumber Co. No. 0274. Big Timber, Mont. July 20, 1915. Pay to the order of Eureka Lumber Co. \$50.00 Fifty and no/100 Dollars. To Scandinavian American Bank, Big Timber, Mont. W. N. Russell. On account. (Back) (Endorsed by) Eureka Lumber Company, C. A. Weil, President, and several clearing-house stamps.

Q. Drawing your attention to "Exhibit No. 12," I will ask you what that is.

A. That is a check for \$50, J. B. Selters.

Q. Will you turn to the stub of your check-book and state to the Court the purpose of that check?

(Testimony of W. N. Russell.)

A. It was given to the Western Lumber Co. notes.

Q. State whether or not those notes were for merchandise purchased prior to the giving of the chattel mortgage? A. I think it was.

Q. Was that sum of money charged to your account and paid on that check, in the Scandinavian American Bank? A. It was.

Mr. ARNOLD.—I offer “Exhibit No. 12” in evidence.

Mr. CAMPBELL.—We make the same objection.

The COURT.—The objection will be overruled.

To which ruling of the Court an exception was duly reserved.

Whereupon “Exhibit No. 12” was received in evidence and is in words and figures as follows:

W. N. Russell Lumber Co. No. 0278. Big Timber, Mont. July 21, 1915. Pay to the order of J. B. Selters, \$50.00. Fifty and no/100 Dollars. To Scandinavian American Bank, Big Timber, Mont. W. N. Russell. (Back) J. B. Selters.

Q. Now, drawing your attention to “Exhibit No. 13,” what is that?

A. That is a check for \$58.55.

Q. Payable to whom?

A. Payable to the Eureka Lumber Company.

Q. What is the notation on the bottom of the check, Mr. Russell? A. On account.

Q. State whether or not that check was for merchandise [11] that was purchased by you prior to June 29, 1915, and was in your lumber yard before that chattel mortgage was given? A. It was.

(Testimony of W. N. Russell.)

Q. State whether that, the amount of that check \$48.55, was charged to your account and paid thru the Scandinavian American Bank? A. It was.

Mr. ARNOLD.—I offer “Exhibit No. 13” in evidence.

Mr. CAMPBELL.—We make the same objection.

The COURT.—The objection will be overruled.

To which ruling of the Court an exception was duly reserved.

Whereupon “Exhibit No. 13” was received in evidence and is in words and figures as follows:

W. N. Russell Lumber Co. No. 0280, Big Timber, Mont. July 30, 1915. Pay to the order of Eureka Lbr. Co. \$48.55, Forty-eight and 55/100 Dollars. To Scandinavian American Bank, Big Timber, Mont. W. N. Russell. (Back) Eureka Lumber Company, C. A. Weil, President. (And several clearing-house stamps.)

Q. Drawing your attention to “Exhibit No. 14,” I will ask you what that is, Mr. Russell?

A. That is a check for \$25 drawn in favor of J. B. Selters.

Q. Will you refer to the stub of your check book and tell the Court what that \$25 was given for?

A. It was given on note, Western Lumber Company.

Q. Was the note of the Western Lumber Company an [12] indebtedness contracted for merchandise prior to the giving of the chattel mortgage on June 29, 1915? A. It was.

Q. The merchandise was then in your yard at the

(Testimony of W. N. Russell.)

time of the giving of the chattel mortgage?

A. Yes, sir.

Mr. ARNOLD.—I offer “Exhibit No. 14” in evidence.

Mr. CAMPBELL.—We make the same objection.

The COURT.—The objection *was* be overruled.

To which ruling of the Court an exception was duly reserved.

Whereupon “Exhibit No. 14” was received in evidence and is in words and figures as follows:

W. N. Russell Lumber Co. No. 0283, Big Timber, Mont. July 26th, 1915. Pay to the order of J. B. Selters, \$25.00, Twenty-Five and no/100 Dollars. To Scandinavian American Bank, Big Timber, Mont. W. N. Russell. (Back) J. B. Selters.

Q. Drawing your attention to exhibit 15, what is that, Mr. Russell?

A. That is a check for \$25 drawn in favor of J. B. Selters.

Q. Will you turn to the stub of your check book and say what that was given for?

A. On the Western Montana Lumber Co. note.

Q. Was that check, the amount of that check, charged to your account and paid through the Scandinavian American Bank? A. It was. [13]

Q. State whether or not the payment was on notes given for merchandise purchased prior to the giving of the chattel mortgage^d, and which merchandise was in your yards at the time of the giving of the chattel mortgage. A. It was.

(Testimony of W. N. Russell.)

Mr. ARNOLD.—I offer “Exhibit No. 15” in evidence.

Mr. CAMPBELL.—We make the same objection.

The COURT.—The objection will be overruled.

To which ruling of the Court, the bank, through its counsel, then and there duly excepted.

Whereupon “Exhibit No. 15 was received in evidence and is in words and figures as follows:

W. N. Russell Lumber Co. No. 0289, Big Timber, Mont. Aug. 3d, 1915. J. B. Selters, \$25.00. Twenty-five and no/100 Dollars To Scandinavian American Bank, Big Timber, Mont. W. N. Russell. (Back) J. B. Selters.

Q. Drawing your attention to “Exhibit No. 16,” I will ask you what that is, Mr. Russell.

A. That is a check for \$50.00.

Q. And payable to whom?

A. Payable to the Bellingham Nat'l Bank.

Q. What is the notation on the bottom of the check?

A. On note Northwestern Lumber and Shingle Co.

Q. Was that notation on the bottom of the check made at the time of the making of the check?

A. It was.

Q. State whether or not the notation was on the check before it was paid by the Scandinavian American [14] Bank? A. It was.

Q. The Northwestern Lumber and Shingle Company notes, were they or were they not given for an indebtedness contracted prior to the giving of this chattel mortgage on June 29?

(Testimony of W. N. Russell.)

A. I think they were.

Q. State whether or not the merchandise that was represented by those notes was in the yard or had been received in the yard prior to the giving of this chattel mortgage? A. I think so.

Mr. ARNOLD.—I offer in evidence “Exhibit 16.”

Mr. CAMPBELL.—We make the same objection.

The COURT.—The objection will be overruled.

To which ruling of the Court, an exception was duly reserved.

Whereupon “Exhibit No. 16” was received in evidence and is in words and figures as follows.

W. N. Russell Lumber Co. No. 0299. Big Timber, Mont. Aug. 6th, 1915. Pay to the order of Bellingham National Bank, \$50.00, Fifty and no/100 Dollars. To Scandinavian American Bank, Big Timber, Mont. W. N. Russell. On notes to Northwestern Lbr. & Shingle Company. (Back) Bellingham National Bank, F. F. Handschy, Cashier. And other clearing house stamps.

Q. Drawing your attention to “Exhibit 17,” I will ask you to state what that is, Mr. Russell.

A. That is a check for \$50 drawn in favor of [15] Fletcher & Evans.

Q. What is the notation on the bottom of the check?

A. On Lindstrom Handforth account.

Q. State whether or not that notation was made at the time the check was drawn? A. It was.

Q. Who are Lindstrom and Handforth people?

(Testimony of W. N. Russell.)

A. Collectors—Lindstrom & Handforth? Lumber dealers.

Q. And why was this check made payable to Fletcher and Evans?

A. They were collecting the account.

Q. Who are Fletcher and Evans?

A. Attorneys.

Q. State whether or not the account that was then owing to the Lindstrom and Handforth company was for merchandise purchased prior to June 29, 1915, and for merchandise that had been received by you prior to then? A. I think it was.

Mr. ARNOLD.—I offer "Exhibit No. 17" in evidence.

Mr. CAMPBELL.—We make the same objection.

The COURT.—The objection will be overruled.

To which ruling of the Court an exception was duly reserved.

Whereupon "Exhibit No. 17" was received in evidence and is in words and figures as follows:

W. N. Russell Lumber Co. No. 0300. Big Timber, Mont., Aug. 6th. 1915. Pay to the order of Fletcher [16] and Evans, \$50.00 Fifty and no/100 Dollars. To Scandinavian American Bank, Big Timber, Mont. W. N. Russell. On Lindstrom Handforth account.

(Back) Fletcher & Evans, by R. E. Evans. And numerous clearing house stamps.

Q. Drawing your attention to Exhibit No. 18, I will ask you what that is, Mr. Russell.

(Testimony of W. N. Russell.)

A. That is a check for \$25 drawn in favor of Joe Meister.

Q. What is the notation on the bottom of check?

A. Final payment on note given for mare.

Q. State whether or not that endorsement or notation on the bottom was made at the time that the check was given? A. It was.

Q. To whom, by whom? A. Myself.

Q. State whether or not that indebtedness to Joe Meister was existing at the time the chattel mortgage was given? A. It was.

Mr. ARNOLD.—I offer “Exhibit No. 18” in evidence.

Mr. CAMPBELL.—We make the same objection.

The COURT.—The objection will be overruled.

To which ruling of the Court an exception was duly reserved.

Whereupon “Exhibit No. 18” was received in evidence, in words and figures as follows:

W. N. Russell Lumber Co. No. 0303. Big Timber, Montana. Aug. 12, 1915. Pay to the order of Joe [17] Meister, \$25.00 Twenty five and no/100 Dollars. To Scandinavian American Bank. Big Timber, Mont., W. N. Russell. Final payment on note given for mare. (Back) Joseph Meister. Also couple of clearing house stamps.

Q. Drawing your attention to “Exhibit No. 19,” I will ask you what that is, Mr. Russell.

A. That is a check for \$25 drawn in favor of J. B. Selters.

Q. Will you turn to the stub of your check book

(Testimony of W. N. Russell.)

and state what that was given for?

A. On note Western Lumber Company.

Q. State whether or not that check was paid by the Scandinavian American Bank and charged to your account? A. It was.

Q. State whether or not the indebtedness was contracted prior to the giving of the chattel mortgage for merchandise that was purchased by you and received into your yard prior to the giving of the chattel mortgage?

A. It was.

Q. Now, I want to refer to "Exhibits 16, 17 and 18" for just a moment. Will you state whether those checks were paid through the Scandinavian American bank and charged to your account?

A. They were.

Mr. ARNOLD.—I offer "Exhibit No. 19" in evidence.

Mr. CAMPBELL.—We make the same objection.

The COURT.—The objection will be overruled. [18]

To which ruling of the Court an exception was duly reserved.

Whereupon "Exhibit No. 19" was received in evidence and is in words and figures as follows:

W. N. Russell Lumber Co. No. 0305, Big Timber, Montana, Aug. 16th, 1915. Pay to the order of J. B. Selters, \$25.00, Twenty-five and no/100 Dollars. To Scandinavian American Bank, Big Timber, Mont. W. N. Russell. (Back) J. B. Selters.

Q. Drawing your attention now to "Exhibit 20,"

(Testimony of W. N. Russell.)

I will ask you what that is.

A. That is a check for \$16.00 to J. B. Selters.

Q. That was given for what?

A. For note, Western Lumber Company.

Q. State whether or not that was made, or the amount called for by that check was paid through the Scandinavian American Bank and charged to your account? A. It was.

Q. State whether or not it was paid for merchandise purchased prior to the giving of the chattel mortgage which had been received by you prior to the giving of it? A. It was.

Mr. ARNOLD.—I offer "Exhibit 20" in evidence.

Mr. CAMPBELL.—We make the same objection.

The COURT.—The exception will be overruled.

To which ruling of the Court an exception was duly reserved.

Whereupon "Exhibit 20" was received in evidence and [19] is in the words and figures as follows:

W. N. Russell Lumber Co. No. 0341. Big Timber, Mont. Oct. 5th, 1915. Pay to the order of J. B. Selters, \$16.00. Sixteen and no/100 Dollars. To Scandinavian-American Bank, Big Timber, Mont. W. N. Russell. (Back) J. B. Selters.

Q. Did you use an auto in connection with your business, Mr. Russell? A. I did.

Q. Drawing your attention to "Exhibit 21," I will ask you what that is.

A. That is a check for \$55 drawn in favor of H. Uttermohle.

Q. What is the notation on the bottom of that?

(Testimony of W. N. Russell.)

A. One-half payment and interest on lots 11 and 12.

Q. State whether or not that wasthe amount called for by that check was paid through the Scandinavian-American Bank and charged to your account.

A. It was.

Q. State when those lots were purchased from Mr. Uttermohle—prior to the giving of this chattel mortgage? A. They were.

Q. Was that notation on the check there at the time it was made out? A. It was.

Mr. ARNOLD.—I offer “Exhibit No. 21” in evidence.

Mr. CAMPBELL.—We make the same objection.

The COURT.—The objection will be overruled.

[20]

To which ruling of the Court, an exception was duly reserved.

Whereupon “Exhibit No. 21” was received in evidence and is in words and figures as follows:

W. N. Russell Lumber Co. No. 0346. Big Timber, Montana, October 5th, 1915. Pay to the order of H. Utermohle, \$55.00. Fifty-five and no/100 Dollars. To Scandinavian American Bank, Big Timber, Mont. W. N. Russell. One half payment and interest on lots 11 and 12. (Back) H. Utermohle.

Q. Drawing your attention to “Exhibit No. 22,” I will ask you what that is.

A. That is a check drawn in favor of the M. C. Cormick Lumber Co. for \$32.50.

Q. What is the notation on the bottom of that

(Testimony of W. N. Russell.)

check, Mr. Russell? A. On account.

Q. State whether that notation was made on that check at the time it was drawn?

A. It was.

Q. State whether or not that notation was made before it was sent or given to the McCormick Lumber Company. A. It was.

Q. State whether or not the money was paid for merchandise purchased and received by you in your lumber business prior to June 29, 1915?

A. It was.

Q. State whether or not the amount called for by that check was paid through the Scandinavian [21] American Bank and charged to your account?

A. It was.

Mr. ARNOLD.—I offer in evidence “Exhibit No. 22.”

Mr. CAMPBELL.—We make the same objection. The COURT.—The objection will be overruled.

To which ruling of the Court, an exception was duly reserved.

Whereupon “Exhibit No. 22” was received in evidence and is in the words and figures as follows:

W. N. Russell Lumber Co. No. 0353. Big Timber, Mont., Oct. 9th, 1915, McCormick Lumber Co., pay to the order of, \$32.50, Thirty-two and 50/100 Dollars. To Scandinavian American Bank, Big Timber, Mont. W. N. Russell. On Account. (Back) Pay The Centralia State Bank, Centralia, Wash., or Order McCormick Lumber Co. And other clearing-house stamps.

(Testimony of W. N. Russell.)

Q. Drawing your attention to Exhibit No. 23, I will ask you what that is?

A. That is a check for \$25 drawn in favor of the Bellingham National Bank.

Q. Will you state what the notation on the bottom of the check is?

A. On notes, Northwestern Lumber and Shingle Co.

Q. Was that notation placed on the bottom of the check at the time it was made and prior to the time it was sent to the Bellingham Nat'l Bank?

A. It was.

Q. State whether or not this money was paid on notes that were given for merchandise purchased [22] by you prior to the 29th day of June, 1915, and received in your lumber yard prior to that time.

A. It was.

Mr. ARNOLD.—I offer "Exhibit No. 23" in evidence.

Mr. CAMPBELL.—We make the same objection.

The COURT.—The objection will be overruled.

To which ruling of the Court, an exception was duly reserved.

Whereupon "Exhibit No. 23" was received in evidence and is in words and figures as follows:

W. N. Russell Lumber Co. No. 0355. Big Timber, Mont., Oct. 9th, 1915. Pay to the order of Bellingham National Bank, \$25.00. Twenty Five and no/100 Dollars. To Scandinavian American Bank, Big Timber, Mont. W. N. Russell. On notes of N. W. Lbr. & Shg. Co. (Back) Bellingham National

(Testimony of W. N. Russell.)

Bank, F. F. Handschy, Cashier. And other clearing house stamps.

Q. Drawing your attention to "Exhibit No. 24," I will ask you to state what that is.

A. That is a check for \$50 drawn in favor of H. Utermohle.

Q. What is the notation on the bottom of that?

A. Balance on lots 11 and 12, block 16.

Q. State whether or not lots 11 and 12 were purchased by you prior to June 29, 1915?

A. They were.

Q. State when the notation at the bottom of the *which*, to which you have just referred, was placed on the check? [23]

A. When it was written.

Q. Prior to the time the check was delivered to Mr. Utermohle? A. Yes, sir.

Q. State whether or not that check, "Exhibit 24," and "Exhibit No. 23" were both paid through the Scandinavian American Bank and the amount of the checks charged to your account? A. They were.

Mr. ARNOLD.—I offer "Exhibit No. 24" in evidence.

Mr. CAMPBELL.—We make the same objection.

The COURT.—The objection will be overruled.

To which ruling of the Court, an exception was duly reserved.

Whereupon "Exhibit No. 24" was received in evidence and is in words and figures as follows:

W. N. Russell Lumber Co. No. 0359. Big Timber, Mont., Oct. 15th, 1915. H. Utermohle, pay to

(Testimony of W. N. Russell.)

the order of, \$50.00. Fifty and no/100, Dollars. To Scandinavian American Bank, Big Timber, Mont. W. N. Russell. Bal. on lots 11 and 12, block 16. (Back) H. Utermohle.

Q. Drawing your attention to "Exhibit No. 25," I ask you what that is, Mr. Russell.

A. A check for \$52.49 drawn in favor of the Scandinavian American Bank.

Q. Will you refer to the stub of your check-book and say what that was?

A. On note against automobile.

Q. On a note against an automobile? [24]

A. Yes, sir.

Q. What do you mean by note against automobile, Mr. Russell?

A. A loan or note with the machine securing it.

Q. And the note payable to whom?

A. To the Scandinavian American Bank.

Q. Have you got that note with you?

A. No, sir.

Q. Do you know where it is? A. No, sir.

Q. That note was given for what?

A. Why, security on the money I borrowed.

Q. Money you borrowed from whom?

A. From the Scandinavian American Bank.

Q. Was the note that was paid by this check, \$52.49, was that one of the notes that was covered by this chattel mortgage? A. No, sir.

Q. State whether that note was given to the Scandinavian American Bank prior to the 29th day of June, 1915, when this chattel mortgage was given?

(Testimony of W. N. Russell.)

A. No, sir. It was given afterwards, I think.

Q. Have you any means of telling?

A. No. Only by looking up the note.

Q. You haven't got the note? A. No, sir.

Q. You don't know where it is. Do you remember the amount of the note?

A. No, not exactly. I think it was—seems as it was a hundred dollars; but I'm not sure about it.

[25]

Q. State whether or not you remember whether this was the final payment on the note.

A. I do not know that.

Q. I will ask you whether Exhibit No. 25, a check for \$52.49, was paid through the Scandinavian American Bank, and the amount of it charged to your account. A. It was.

Mr. ARNOLD.—I offer "Exhibit No. 25" in evidence.

Mr. CAMPBELL.—We make the same objection.

The COURT.—The objection will be overruled.

To which ruling of the Court, an exception was duly reserved.

Whereupon "Exhibit No. 25" was received in evidence and is in words and figures as follows:

W. N. Russell Lumber Co. No. 0383. Big Timber, Mont. Nov. 6th, 1915. Pay to the order of Scandinavian American Bank, \$52.49, Fifty-two and 49/100 Dollars. To Scandinavian American Bank, Big Timber, Mont. W. N. Russell.

Q. Drawing your attention to "Exhibit No. 26," I will ask you what that is.

(Testimony of W. N. Russell.)

A. That is a check for \$40 in favor of A. L. Powell.

Q. What is the notation on the bottom of that check?

A. To apply on note.

Q. Who was A. L. Powell?

A. He was an insurance agent.

Q. Do you know when that note was given?

A. No, I don't. [26]

Q. Was it before or after June 29, 1915, if you remember, Mr. Russell? A. I don't remember.

Q. Was that notation on that check placed there at the time you made out the check and gave it to Mr. Powell? A. It was.

Mr. ARNOLD.—I offer in evidence "Exhibit No. 26."

Mr. CAMPBELL.—We make the same objection.

The COURT.—The objection will be overruled.

To which ruling of the Court, an exception was duly reserved.

Mr. ARNOLD.—We do not include in the offer the receipt, just the check.

Whereupon "Exhibit No. 26" was received in evidence and is in the words and figures as follows:

W. N. Russell Lumber Co. No. 0390. Big Timber, Mont. Nov. 21st, 1915. Pay to the order of A. L. Powell, \$40.00. Forty and no/100 Dollars. To Scandinavian American Bank, Big Timber, Mont. W. N. Russell. To apply on note. Back—A. L. Powell.

Q. Drawing your attention to "Exhibit No. 27," I will ask you what that is.

(Testimony of W. N. Russell.)

A. That is a check for \$20 drawn in favor of Frank Lamp.

Q. Will you refer to the stub of your check-book and say what that was given for, if you know?

A. Payment on paint.

Q. To Frank Lamp? A. Yes, sir. [27]

Q. You say payment on paint—to whom?

A. Why, it doesn't show here except Frank Lamp.

Q. Who is Mr. Frank Lamp?

A. An attorney in Big Timber, Montana.

Q. Can you tell from the stub of the check-book what company that money called for by the check was payable to? A. No, sir; I cannot.

Q. What was the purpose of paying this to Mr. Lamp?

A. He was collecting for two paint companies.

Q. State whether or not that payment was made for merchandise received by you in your business prior to June 29, 1915? A. It was.

Q. And it was owned at the time of the giving of the chattel mortgage, was it? A. Yes, sir.

Q. Was that \$20 called for by that check paid through the Scandinavian American bank and charged to your account? A. It was.

Mr. ARNOLD.—I offer in evidence Exhibit No. 27.

Mr. CAMPBELL.—We make the same objection.

The COURT.—The objection will be overruled.

To which ruling of the Court, an exception was duly reserved.

Whereupon "Exhibit No. 27" was received in evidence and is in words and figures as follows:

(Testimony of W. N. Russell.)

W. N. Russell Lumber Co. No. 400. Big Timber, [28] Mont. Nov. 22, 1915. Pay to the order of Frank Lamp, \$20.00. Pay \$20 and 00 cts. Dollars. To Scandinavian American Bank, Big Timber, Mont. W. N. Russell. (Back) Frank Lamp.

Q. Drawing your attention to "Exhibit No. 28," I will ask you what that is?

A. That is a check for \$50 drawn in favor of J. B. Selters.

Q. And what is the notation on the bottom of it?

A. On account of Eureka Lumber Co.

Q. Who is the Eureka Lumber Co.?

A. Why, they're a lumber Company.

Q. Of where? A. Eureka, Montana.

Q. State whether or not this payment to Mr. Selters was on account of merchandise purchased from the Eureka Lumber Company prior to the giving of the chattel mortgage?

A. I don't know about that, whether it was before or after. It seemed like it was after.

Q. That notation was on the check, was it, Mr. Russell, at the time the check was given to Mr. Selters? A. It was.

Q. State whether or not the amount called for by that check was paid through the bank. A. It was.

Q. And charged to your account? A. It was.

Q. Now, drawing your attention to Exhibit No. [29] 29, I will ask you what that is.

A. That is a check for \$20 drawn in favor of Frank Lamp.

Q. Can you tell from the stub of your check-book

(Testimony of W. N. Russell.)

what it was for? A. It was on paint account.

Q. What account, do you know? A. No, sir.

Q. State how you happened to make this payment to Mr. Lamp?

A. He was collecting for two paint companies.

Q. State whether or not it was for paint that was received in your business prior to June 29, 1915?

A. It was.

Q. Was the amount called for by that check paid through the Scandinavian American Bank and charged to your account? A. It was.

Mr. ARNOLD.—I offer in evidence “Exhibit No. 29.”

Mr. CAMPBELL.—We make the same objection.

The COURT.—The objection will be overruled.

To which ruling of the Court, an exception was duly reserved.

Whereupon “Exhibit No. 29” was received in evidence and is in words and figures as follows:

W. N. Russell Lumber Co. No. 416. Big Timber, Montana, Dec. 4, 1915. Pay to the order of Frank Lamp, \$20.00 Pay \$20 and 00 cts. To Scandinavian American Bank, Big Timber, Mont. W. N. Russell. [30]

(Back) F. M. Lamp.

Q. Drawing your attention to “Exhibit No. 30,” I ask you what that is, Mr. Russell.

A. That is a check for \$32.10 drawn in favor of Roe James Glass Company.

Q. State what the notation is on the bottom of the check. A. Balance in full for plate-glass.

(Testimony of W. N. Russell.)

Q. State whether that notation was on the check at the time it was given to the Roe James Glass Company. A. It was.

Q. State whether or not that was given for merchandise purchased and received by you prior to June 29, 1915. A. Purchased after the mortgage.

Q. Purchased after the mortgage? A. Yes, sir.

Q. State whether or not the purchase of glass was paid for at the time you received it, in full?

A. No; thirty days. After I received it.

Q. State, if you can, after looking at the notation on the check, whether it was paid for in more than one payment? A. It was.

Q. Have you any means of ascertaining now just how much glass was purchased?

A. If we could find the freight bills, J. Loving could show the other payment on the glass. It was bought at the delivered price. [31]

Mr. ARNOLD.—I offer in evidence “Exhibit No. 30.”

Mr. CAMPBELL.—We make the same objection.

The COURT.—The objection will be overruled.

To which ruling of the Court, an exception was duly reserved.

Whereupon “Exhibit No. 30” was received in evidence and is in words and figures as follows:

W. N. Russell Lumber Co. No. 420. Big Timber, Mont. Dec. 4, 1915. Roe-James Glass Company, \$32.10. Pay \$32 and 10 cts. To Scandinavian American Bank, Big Timber, Mont. W. N. Russell. Bal. in full for plate-glass. (Back) Roe-James

(Testimony of W. N. Russell.)

Glass Co., Inc., and other counting-house stamps.

I'd like to ask you whether the amount called for by that check was paid through the Scandinavian American Bank. A. It was.

Q. And charged to your account? A. It was.

Q. Now, directing your attention to "Exhibit No. 31," I will ask you what that is, Mr. Russell.

A. A check for \$15 on the Oliver Typewriter Co.

Q. What is the notation on the bottom of it?

A. Balance in full for the machine.

Q. State if you can when, or about, the machine was purchased—prior to the giving of the chattel mortgage or after? A. I think after.

Q. State whether or not this was the final payment on the machine? [32]

A. It was. It says so.

Q. Was the amount called for by that check paid through the Scandinavian American Bank and charged to your account? A. It was.

Mr. ARNOLD.—I offer "Exhibit No. 31" in evidence.

Mr. CAMPBELL.—We make the same objection.

The COURT.—The objection will be overruled.

To which ruling of the Court, an exception was duly reserved.

Whereupon "Exhibit No. 31" was received in evidence and is in words and figures as follows:

W. N. Russell Lumber Co. N. 422. Big Timber, Mont. Dec. 4, 1915. Pay to the order of The Oliver Typewriter Co. \$15.00. Pay \$15 and 00 cts. To Scandinavian American Bank, Big Timber, Mont.

(Testimony of W. N. Russell.)

W. N. Russell. Bal. in full for machine. (Back)
Pay to the order of any bank, banker or trust Co.
Prior endorsements guaranteed. Dec. 15, 1915,
Commercial Bank & Trust Company, 93-98, Big
Timber, Mont. Other clearing-house stamps with a
“cancelled” stamp over them.

Q. I'd like to ask you if that notation on the check,
balance in full for machine, was on the check at the
time that it was given? A. It was.

Q. And before payment? A. Yes.

Q. Now, directing your attention to “Exhibit No.
32,” I will ask you what that is. [33]

A. That is a check for \$39.85 drawn in favor of
the A. W. Miles Lumber Company.

Q. What is the notation on the bottom of the
check? A. Part payment on cement.

Q. State whether or not that notation was on the
check prior to the giving of it,—to the A. W. Miles
Co.—I mean the words, “Part payment on ce-
ment”—was that on it before you gave the check
to the lumber company? A. It was.

Q. State whether or not that cent was purchased
before or after the giving of the chattel mortgage.

A. It was purchased afterwards.

Q. Do you know how long after the purchase of
the cement and its receipt by you. this check was
given? A. I think likely thirty days.

Q. Was the amount called for by the check paid
by the Scandinavian American Bank and charged to
your account? A. It was.

(Testimony of W. N. Russell.)

Mr. ARNOLD.—I offer in evidence “Exhibit No. 32.”

Mr. CAMPBELL.—We make the same objection.

The COURT.—The objection will be overruled.

To which ruling of the Court, an exception was duly reserved.

Whereupon “Exhibit No. 32” was received in evidence and is in words and figures as follows:

W. N. Russell Lumber Co. No. 427. Big Timber, Mont. Dec. 4, 1915. Pay to the order of A. W. Miles [34] Lumber Co. \$39.85. Pay \$39 and 85 cts. To Scandinavian American Bank, Big Timber, Mont. W. N. Russell. Part payment on cement. (Back) The A. W. Miles Lumber & Coal Co. Other clearing-house stamp.

Q. Drawing your attention to “Exhibit No. 33,” I will ask you what that is.

A. That is a check for \$65 drawn in favor of W. N. Russell.

Q. W. N. Russell was who? A. Myself.

Q. State whether or not you received the money called for by that check from the Scandinavian American Bank? A. I did.

Q. Was the amount called for by that check charged to your account? A. It was.

Mr. ARNOLD.—I offer in evidence “Exhibit No. 33.”

Mr. CAMPBELL.—We make the same objection.

The COURT.—The objection will be overruled.

To which ruling of the Court, an exception was duly reserved.

(Testimony of W. N. Russell.)

Whereupon "Exhibit No. 33" was received in evidence and is in words and figures as follows:

W. N. Russell Lumber Co. No. 431. Big Timber, Mont. Dec. 14, 1915. Pay to the order of W. N. Russell, \$65.00. Sixty-five and no/100 Dollars. To Scandinavian American Bank. W. N. Russell. [35]

Q. Drawing your attention to "Exhibit No. 34," I will ask you what that is.

A. That is a check for \$25 drawn in favor of the A. W. Miles Lumber Co.

Q. What is the notation on the bottom of the check? A. On account.

Q. Was that notation on the check at the time it was given to the A. W. Miles Co., before payment?

A. It was.

Q. State whether or not the amount called for by that check was paid through the Scandinavian American Bank and charged to your account.

A. It was.

Mr. ARNOLD.—I offer in evidence "Exhibit No. 34."

Mr. CAMPBELL.—We make the same objection.

The COURT.—The objection will be overruled.

To which ruling of the Court, an exception was duly reserved.

Whereupon "Exhibit No. 34" was received in evidence and is in words and figures as follows:

W. N. Russell Lumber Co. No. 442. Big Timber, Mont. Jan. 5th, 1916. Pay to the order of A. W. Miles Lumber Co. \$25.00. Twenty-five and no/100 Dollars. To Scandinavian American Bank, Big

(Testimony of W. N. Russell.)

Timber, Mont. W. N. Russell. On account.
(Back) The A. W. Miles Lumber & Coal Co. Other
clearing-house stamp.

Q. Drawing your attention to "Exhibit 35," I
ask you what that is, Mr. Russell?

A. That is a check for \$25 drawn in favor of the
A. W. [36] Miles Co.

Q. What is the notation on that check?

A. Balance of account in full.

Q. State whether or not that notation was on it
at the time the check was given? A. It was.

Q. And before it was paid? A. It was.

Q. And was the amount called for by that check
paid through the Scandinavian American Bank and
charged to your account? A. It was.

Mr. ARNOLD.—I offer in evidence "Exhibit No.
35."

Mr. CAMPBELL.—We make the same objection.

The COURT.—The objection is overruled.

To which ruling of the Court, an exception was
duly reserved.

Whereupon "Exhibit No. 35" was received in evi-
dence and is in words and figures as follows:

W. N. Russell Lumber Co. No. 450. Big Timber,
Mont. Jan. 10th, 1916. Pay to the order of A. W.
Miles Lumber Co. \$25.00. Twenty-five and no/100
Dollars. To Scandinavian American Bank, Big
Timber, Mont. W. N. Russell. Bal. of account in
full. (Back) The A. W. Miles Lumber & Coal Co.

Q. Drawing your attention to "Exhibit No. 36,"
I will ask you what that is, Mr. Russell.

(Testimony of W. N. Russell.)

A. That is a check for \$21.60 drawn in favor of J. B. Selters.

Q. What is the notation on that check? [37]

A. On Eureka account.

Q. What is the meaning of the notation "On Eureka account?"

Mr. CAMPBELL.—That is objected to for the reason that the check is the best evidence.

Q. Who are the Eureka people?

A. They were a lumber concern.

Q. State how you happened to make this check payable to J. B. Selters?

A. He was collecting for the company.

Q. State whether or not the account of the Eureka Lumber Co. was for merchandise purchased prior to the giving of the chattel mortgage and merchandise that was received by you prior?

A. I think it was.

Mr. ARNOLD.—I offer "Exhibit No. 36" in evidence.

Mr. CAMPBELL.—We make the same objection.

The COURT.—The objection is overruled.

To which ruling of the Court, an exception was duly reserved.

Whereupon "Exhibit No. 36" was received in evidence and is in words and figures as follows:

W. N. Russell Lumber Co. No. 453. Big Timber, Mont. Jan. 13th, 1916. Pay to the order of J. B. Selters, \$21.60. Twenty-one and 60/100 Dollars. To Scandinavian American Bank, Big Timber, Mont.

(Testimony of W. N. Russell.)

W. N. Russell. "On Eureka Account." (Back)

J. B. Selters.

Q. Drawing your attention, now, to "Exhibit No. 37," I will ask you what that is, Mr. Russell. [38]

A. That is a check for 55 cents.

Q. Payable to whom? A. I cannot read that.

Q. Well, but you can tell us what the check was, what does the check say? A. 55 cents, it says.

Q. And payable to whom? A. I don't know.

Q. Well, what is that word there? (Indicating.)

A. I just told you I didn't know; what more do you want.

Q. What is the notation on the bottom of it?

A. Interest on note.

Q. Do you know anything about it?

A. No, I do not recall.

Q. Do you know why it was given? A. No, sir.

Q. If that is a check to your account, do you know why—

A. It's interest on that note as near as I can see.

Q. Well, what note is that, do you know?

A. No, sir.

Q. Now, drawing your attention to "Exhibit No. 38," I will ask you what that is, Mr. Russell.

A. A check for \$1.81 to the bank.

Q. Payable to what bank?

A. To the Scandinavian American Bank.

Q. Who drew that check? A. Myself.

Q. When? [39] A. It was October 7th.

Q. Of what year? A. 1916.

Q. Now, what was the purpose of that check?

(Testimony of W. N. Russell.)

A. Payment on deposit box.

Q. Have you got a deposit box at the Scandinavian American Bank? A. Not now. I did have.

Q. When did you give that box up?

A. From the time the box—

Q. (Interrupting.) No, when did you discontinue having it? A. It run for a year and a quarter.

Q. Do you know when the quarter expired?

A. No, I don't.

Q. Was the amount called for by this check charged to your account? A. It was.

Q. And paid through the Scandinavian American Bank? A. It was.

Q. Well, now, was that money put into the bank subsequent to your being adjudicated a bankrupt or was it money that was in the bank at the time you were adjudicated a bankrupt?

A. Why, I think afterwards.

Q. You put this in afterwards? A. It was.

Q. Have you got an account with the bank now?

A. No, sir.

Mr. CAMPBELL.—That is objected to as immaterial, [40] and if the Court please, I move to strike the answer out as not having anything to do with the case.

The COURT.—Strike it out as being immaterial.

To which ruling of the Court, an exception was duly reserved.

Q. Now, Mr. Russell, drawing your attention to "Exhibit No. 39," I will ask you what that is.

A. That is a check for \$6.45 drawn in favor of

(Testimony of W. N. Russell.)

the City Meat Market.

Q. State whether or not that was—state, if you know, what that check was for? A. Meat.

Q. For your personal expenses and household use?

A. Yes, sir.

Q. Was that paid through the Scandinavian American Bank and charged to your account?

A. It was.

Mr. ARNOLD.—I offer “Exhibit No. 39” in evidence.

Mr. CAMPBELL.—We make the same objection.

The COURT.—What is the purpose of it?

Mr. ARNOLD.—The idea is this: The chattel mortgage provides that he was to keep sufficient money on hand to pay his living expenses and deposit the balance in the bank. Now, then, this shows he did not do any such a thing, whatever he got he put it into the bank and took it out and used it in any way he wanted in contravention of his agreement with the bank. [41]

The COURT.—Admitted; I cannot see how it will be detrimental to the interests of the bankrupt.

Mr. ARNOLD.—Possibly may not make any difference whether he did it one way or the other, but it shows how he was handling that account.

Mr. CAMPBELL.—He had a right to live out of the proceeds of the business.

Mr. ARNOLD.—Not after he put the money in the bank.

Mr. CAMPBELL.—Don't make any difference whether he checked it out or whether he used cash.

(Testimony of W. N. Russell.)

The COURT.—It will be admitted.

Whereupon “Exhibit No. 39” was received in evidence, having been objected to and an exception taken to the ruling of the Court, and is in words and figures as follows:

W. N. Russell Lumber Co. No. 0256.

Big Timber, Mont., July 1st, 1915. Pay to the order of City Meat Market, \$6.45. Six and 45/100 Dollars. To Scandinavian American Bank, Big Timber, Mont. W. N. Russell. (Back) City Meat Market. Goering Bros.

Q. Now, drawing your attention to “Exhibit 41,” I will ask you what that is.

A. A check for \$2.90 favor of City Meat Market.

Q. And the purpose of that is what?

A. To pay for living expenses.

Q. Your personal living expenses? A. Yes, sir.

[42]

Q. That check was paid, was it, through the Scandinavian American Bank and charged to your account? A. It was.

Mr. ARNOLD.—I offer “Exhibit 41” in evidence.

Mr. CAMPBELL.—We make the same objection.

The COURT.—The objection will be overruled.

To which ruling of the Court an exception was duly reserved.

Whereupon “Exhibit No. 41” was received in evidence and is in words and figures as follows:

W. N. Russell Lumber Co., No. 0295. Big Timber, Mont., Aug 4, 1915. Pay to the *lrder* of City Meat Market, \$2.90. Two and 90/100 Dollars. To Scan-

(Testimony of W. N. Russell.)

dinavian American Bank, Big Timber, Mont.. W. N. Russell. (Back) City Meat Market, Goering Bros.

Q. Drawing your attention to Exhibit No. 42, I will ask you what that is, Mr. Russell.

A. That is a check for \$11.17 drawn in favor of the City Meat Market.

Q. Payable for what? A. Living expenses.

Q. State whether or not the amount called for by that check was paid through the Scandinavian American Bank. A. It was.

Q. And charged to your account? A. It was.

Mr. ARNOLD.—I offer in evidence "Exhibit 42."

Mr. CAMPBELL.—We make the same objection.

[43]

The COURT.—The objection will be overruled.

To which ruling of the Court an exception was duly reserved.

Whereupon "Exhibit No. 42" was received in evidence and is in words and figures as follows:

W. N. Russell Lumber Co. No. 0342. Big Timber, Mont., Oct. 5th, 1915. Pay to the order of City Meat Market, \$11.17. Eleven and 17/100 Dollars. To Scandinavian American Bank, Big Timber, Mont.. W. N. Russell. (Back) City Meat Market, Goering Bros.

Q. Drawing your attention to "Exhibit 43," I will ask you what that is, Mr. Russell.

A. A check for \$3.80.

Q. Payable to whom?

A. The City Meat Market.

(Testimony of W. N. Russell.)

Q. And that was for what?

A. That was for living expenses.

Q. Personal expenses? A. Yes, sir.

Q. Was the amount called for by that check paid through the Scandinavian American Bank and charged to your account? A. It was.

Mr. ARNOLD.—I offer in evidence “Exhibit 43.”

Mr. CAMPBELL.—We make the same objection.

The COURT.—The objection will be overruled.

To which ruling of the Court an exception was duly reserved.

Whereupon “Exhibit No. 43” was received in evidence [44] and is in words and figures as follows:

W. N. Russell Lumber Co. No. 377. Big Timber, Mont., Nov. 2d, 1915. Pay to the order of City Meat Market, \$3.80. Three and 80/100 Dollars. To Scandinavian American Bank, Big Timber, Mont. W. N. Russell. (Back) City Meat Market, Goering Bros.

Q. Drawing your attention to “Exhibit No. 44,” I will ask you to state what that is.

A. That is a check for \$2.60 to the City Meat Mkt.

Q. And given for what?

A. Personal expenses.

Q. State whether or not the amount called for by that check was charged to your account and paid through the bank. A. It was.

Mr. ARNOLD.—I offer “Exhibit 44” in evidence.

Mr. CAMPBELL.—We make the same objection.

The COURT.—The objection will be overruled.

(Testimony of W. N. Russell.)

To which ruling of the Court an exception was duly reserved.

Whereupon "Exhibit No. 44" was received in evidence and is in words and figures as follows:

W. N. Russell Lumber Co. No. 417. Big Timber, Mont., Dec. 4th, 1915. Pay to the order of City Meat Market, \$2.60. Pay \$2 and 60 cts. To Scandinavian American Bank, Big Timber, Mont. W. N. Russell. (Back) City Meat Market, Goering Bros.

Q. Drawing your attention to "Exhibit No. 45," I will ask you what that is. [45]

A. A check for \$4.30, drawn in favor of the City Meat Market.

Q. That was given for what?

A. Personal expenses.

Q. State whether or not that check was paid through the Scandinavian American Bank and charged to your account. A. It was.

Mr. ARNOLD.—I offer in evidence "Exhibit 45."

Mr. CAMPBELL.—We make the same objection.

The COURT.—The objection will be overruled.

To which ruling of the Court an exception was duly reserved.

Whereupon "Exhibit No. 45" was received in evidence and is in words and figures as follows:

W. N. Russell Lumber Co. No. 447. Big Timber, Mont. Jan. 7th, 1916. Pay to the order of City Meat Market, \$4.30. Four and 30/100 Dollars. To Scandinavian American Bank, Big Timber, Mont. W.

(Testimony of W. N. Russell.)

N. Russell. (Back) City Meat Market, Goering Bros.

Q. Mr. Russell, I will call your attention to the claim filed in this case by the Pacific States Lumber Company. I will ask you, Mr. Russell, to turn to that account and state when the indebtedness called for by that account was incurred.

Mr. CAMPBELL.—I object to this for the reason that it is incompetent, irrelevant and immaterial, and not having any bearing on the issues of this hearing. [46]

The COURT.—What is the purpose of it?

Mr. ARNOLD.—The purpose of this is to prove that there was a large amount of merchandise purchased subsequent to the giving of the chattel mortgage that was not paid for in cash as called for and provided for by the provisions of the chattel mortgage, and received into the business of Mr. Russell and used in his business.

The question was read.

The COURT.—The objection will be overruled.

To which ruling of the Court an exception was duly reserved.

A. August 13, 1915.

Q. And the purchase was what?

A. The amount, do you mean?

Q. No, what was it? A. It was lumber.

Q. State whether or not the lumber described in that bill of the Pacific States Lumber Co. was received in your lumber yard subsequent to June 29, 1915, and used in your business. A. It was.

(Testimony of W. N. Russell.)

Q. Prior to your being adjudged a bankrupt. I will ask you, Mr. Russell, the amount of that bill.

A. \$565.12.

Q. Would that be the amount that would have to be paid by you or would there be any deduction for freight?

A. The freight would come out of it. [47]

Q. Can you tell the amount of the freight bill?

A. The freight was \$185.90.

Q. What would be the net amount of the bill.

A. A balance of \$379.22.

Q. State whether or not that amount would be the net amount after the payment of freight.

A. Yes, sir.

Q. Then the cost of the merchandise, or rather the cost of the lumber delivered at Big Timber including freight,—would that be the total amount of the bill, \$565.12? A. Yes, sir.

Q. State whether or not you paid the freight.

A. I did.

Mr. ARNOLD.—I offer in evidence No. 45, the bill of the Pacific States Lumber Co.

Mr. CAMPBELL.—I object to that for the reason that it is incompetent, irrelevant and immaterial, and hasn't any bearing on the case; and for the further reason that there has been no showing made that the bank in any way or any of its officials gave its consent to the mortgagor to make purchases for other than cash. Absolutely incompetent.

Mr. ARNOLD.—Well, I cannot prove the case all at one time.

(Testimony of W. N. Russell.)

The COURT.—Well, I think it's material and ought to be considered. The objection will be overruled.

To which ruling of the Court an exception was [48] duly reserved.

Whereupon "Exhibit No. 45," being the bill of the Pacific States Lumber Company, was received in evidence.

(Failure to set out the exhibit is for the reason that it has been misplaced and cannot be found.)

Q. Mr. Russell, drawing your attention to "Exhibit No. 46," the proof of claim filed by the Atlas Oil Company, I will ask you to refer to that and state the amount of the account. A. \$154.43.

Mr. ARNOLD.—I offer "Exhibit No. 46" in evidence.

Mr. CAMPBELL.—I object for the reason that it is incompetent, irrelevant and immaterial.

The COURT.—The objection will be overruled.

To which ruling of the Court an exception was duly reserved.

Mr. ARNOLD.—I will withdraw this exhibit for a while, if the Court please, and come back to it later.

Q. Drawing your attention to "Exhibit No. 47," proof of claim of the Eureka Lumber Company, I will ask you, if you can, to state the amount of that claim—drawing your particular attention to the note, copy of the note which is attached to it. Was the original of that note given by you to the Eureka Lumber Company A. It was.

Q. On what date? A. July 1, 1915. [49]

(Testimony of W. N. Russell.)

Q. Can you state what payments were made, if any, on that note by referring to the back of it?

A. Freight bill \$182.51. July 30, check \$50; July 30, check \$48.55; December 2, 1915, \$50. Note \$30, January 30, 1916.

Q. Do you know the balance that is due on that note, Mr. Russell? A. No, I don't.

Q. Those are the only payments that were made on that?

A. That and the freight—well, the freight's in there, yes.

Q. Now, can you state what that note is given for, Mr. Russell, on July 1, 1915?

A. Security on the lumber received from them.

Q. Security or—the note was not secured in any way, was it—just a straight note?

A. I don't know.

Q. Did you give the Eureka Lumber Company any security or any mortgage or anything for the payment of that note?

A. I don't know. There's security on one of them companies, a crop security, and it seemed to me it was them. It was them two. Note secured by crop.

Q. State whether or not they realized anything on the crop? A. No, sir.

Q. The crop—what became of it?

A. It was hailed out. [50]

Q. That note was apparently payable at the Scandinavian American Bank, Mr. Russell, the original was? A. Yes, sir.

(Testimony of W. N. Russell.)

Q. Do you remember whether that, the original of the note, was ever presented to you for payment by the Scandinavian American Bank?

A. No, I don't.

Q. Did you ever talk, as far as you remember, with the Scandinavian American Bank or any officers with relation to this note?

Mr. O'CONNOR.—That is objected to as immaterial.

The COURT.—The objection is overruled.

To which ruling of the Court, an exception was duly reserved.

A. No. I think Mr. Selters held that note for collection, though.

Q. That note, state whether it was given for indebtedness that was contracted prior to June 29, 1915? A. It was, I think.

Q. For merchandise that you were owing for at the time of the giving of the chattel mortgage?

A. Yes, sir.

Q. Drawing your attention to exhibit No. 48, the proof of claim of Santis Forsythe, drawing your attention to that I will ask you the amount of that claim.

A. The claim is \$24.15.

Q. The indebtedness was incurred when? [51]

A. From July 21 to September the 9th.

Q. Of what year? A. 1915.

Q. State whether or not the merchandise represented by that bill was received by you and used in your business subsequent to June 29, 1915?

(Testimony of W. N. Russell.)

A. This bill is new to me; I never seen it before.

Q. Did you receive the merchandise?

A. Not to my knowledge; that is the first time I ever seen that.

Q. Did you during that period of time ever receive anything from Mr. Forsythe?

A. Not that I remember of.

Q. Now, drawing your attention to "Exhibit No. 49," the account of the Eclipse Paint and Manufacturing Co., I will ask you to state the amount of that account, Mr. Russell. A. \$141.05.

Mr. O'CONNOR.—That is objected to, if the Court please; is there any question in here about the amounts of these separate claims?

Mr. ARNOLD.—I want to show by each of these claims the fact that they were,—as far as I can—that they were purchased subsequent to the giving of the chattel mortgage in violation of the terms of chattel mortgage.

Mr. O'CONNOR.—He's got a right under the terms of it to purchase supplies. [52]

Mr. ARNOLD.—For cash or its equivalent.

Mr. O'CONNOR.—And that settlement is a promissory note, my dear sir. If a person receives a note as payment, its equivalent to cash and regarded so in law.

Mr. O'CONNOR.—We object to the introduction of the claim, very immaterial.

The COURT.—The objection is overruled.

To which ruling of the Court, an exception was duly reserved.

(Testimony of W. N. Russell.)

Q. That was for what, Mr. Russell?

A. For paints and oils.

Q. Purchased by you? A. Yes.

Q. And received into your lumber yard?

A. Yes, sir.

Q. What was the date of the purchase?

A. Fourth month, 13, 1915.

Q. That was the date of the purchase?

A. Yes, sir.

Q. What was the date it was due?

Mr. O'CONNOR.—That is objected to as immaterial, the date of its purchase—object to the introduction of the exhibit for the reason that the note itself shows it was purchased before the mortgage was given.

The COURT.—Overruled.

To which ruling of the Court, an exception was duly reserved.

Q. That was an indebtedness existing at the time [53] you gave the chattel mortgage, was it?

A. Yes.

Q. Was that unpaid at the time you were adjudged a bankrupt? A. Part of it was unpaid.

Q. Well, what was the amount unpaid at the time you were adjudged a bankrupt? A. \$141.05.

Q. Now, referring a moment to the amount of the Pacific State's Lumber Company, will you state whether or not that was unpaid at the time that you were adjudged a bankrupt?

A. A part of it was unpaid.

Q. How much?

(Testimony of W. N. Russell.)

A. They received other money than the freight, I think, though I cannot keep these in my head and give you an intelligent answer, I'd simply have to figure out the bills, I'd have to have the original invoices.

Q. Where are those original invoices, if you know? A. They were given to the trustee.

Q. Isn't that the same as the original invoice, you don't have to bother with the proof of claim; please just take their invoice, Mr. Russell.

A. Well, you can believe their statement or not believe it.

Q. Yes. Was that the amount you paid that you purchased from them? A. \$565.12, shows here.

Q. Did you purchase that lumber from them?
[54]

Q. Did you purchase that lumber from them?

A. I expect so.

Q. You paid the amount of freight. Now, did you ever pay them on account, that bill?

A. I don't know. It doesn't show here that I did.

Q. Well, don't you know whether you did or not?

A. No.

Q. Have you got any book that would show it?

A. Those invoices would show it.

Q. Would your invoices show the payments that were made on the account or would it simply be your check book?

A. It shows on the invoices. I put them—I marked it off on the invoice what I still owe them,

(Testimony of W. N. Russell.)

showing on my invoices. Those invoices were a set of books to me.

Q. What is the amount of that account, Mr. Russell? Whose account is that?

A. That is \$565.12. Pacific States Lbr. Co.

Q. I will draw your attention, Mr. Russell, to the schedule that you filed in this—schedule of your liabilities, and I will ask you to refer to that schedule and say whether you did not, in making up your account of liabilities, list the Pacific States Lumber Company.

Mr. O'CONNOR.—That is objected to for the reason that the list of liabilities itself is the best evidence of what it contained.

The COURT.—Overruled.

To which ruling of the Court, an exception was [55] duly reserved.

Noon recess.

Reconvening, examination was continued.

The last question was read.

A. Yes.

Q. Now, are you in a position now to state, Mr. Russell, with reference to the Pacific States Lumber Company account, what amount was due at the time the petition in bankruptcy was filed against you?

A. \$379.22.

Q. And that was all for merchandise purchased subsequently to the giving of the chattel mortgage?

A. Yes.

Q. Now, with reference to the account of the Atlas Oil Company, "Exhibit No. 46," are you in a posi-

(Testimony of W. N. Russell.)

tion now to state what was the amount due at the time you filed your petition in bankruptcy?

A. \$154.43.

Q. State whether or not that was due at a prior time at which the chattel mortgage was given.

A. Yes.

Q. Drawing your attention to "Exhibit 50," the account of Bloedel Donovan Lumber Company, I will ask you what was due to the Bloedel Donovan Lbr. Company at the time you filed your petition in bankruptcy. A. \$621.56.

Q. Will you state whether that was for merchandise that they sold and delivered to you subsequent [56] to the 29th day of June, 1915, when this chattel mortgage was given?

A. That was bought after the mortgage was given.

Q. And state what it was that was bought?

A. Lumber.

Q. State whether or not that lumber was received and used in your business. A. It was.

Q. Subsequent to June 29, 1915? A. Yes, sir.

Q. It was unpaid at the time you filed your petition in bankruptcy? A. It was.

Q. Drawing your attention to Exhibit No. 51, the claim of the Northwestern Lumber & Shingle Co., I will ask you the amount that was due at the time you filed your petition in bankruptcy, to the Northwestern Lumber and Shingle Company.

A. \$575.00 and interest at 8 per cent.

Q. And that was unpaid, was it?

A. Yes, sir.

(Testimony of W. N. Russell.)

Q. Now, that was represented by what, Mr. Russell? A. By two notes.

Q. Those notes were given—can you state when, prior to June 29, 1915—before?

A. I think they were.

Q. Now, then, those payments that are made as shown by the statement, two 50-dollar payments and one 25-dollar payment. Can you state who those payments were made to, or whether to an attorney [57] or whether made direct.

A. They were either made direct or to their bank.

Q. Can you state whether or not those were the payments that were made, to Mr. Selters?

A. No. I don't think that they were, either one.

Q. State whether or not \$700 is the amount that was owing to those people at the time that that chattel mortgage was given. A. Yes.

Q. I think you said it was represented by two notes, did you not? A. Yes.

Q. What were those notes given for?

A. For merchandise.

Q. That was received in your lumber yard prior to the giving of the chattel mortgage? A. Yes.

Q. Drawing your attention to Exhibit No. 52, the account of the McCormick Lumber Company filed, and proof of claim. I will ask you the amount of that account at the time—due to those people at the time you filed your petition in bankruptcy.

A. \$750.50.

Q. State whether or not that was for an indebtedness that was due and owing to them at the time you

(Testimony of W. N. Russell.)

gave the chattel mortgage in June, 1915? A. Yes.

Q. Then it is or was an obligation owing to the McCormick Lumber Co. at the time you gave this chattel mortgage—it hasn't been paid, has it? [58]

A. No.

Mr. ARNOLD.—I reoffer in evidence “Exhibits 45, 46, 50 and 52.”

Mr. CAMPBELL.—I object to the introduction of those claims for the reason that they are incompetent, irrelevant and immaterial. They have no bearing on the issues in this hearing, and for the further reason that it is not shown that the bank or any of its officers had knowledge that Mr. Russel had contracted these obligations.

The COURT.—The objection will be overruled.

To which ruling of the Court, an exception was duly reserved.

Whereupon “Exhibits No. 45” (having been subsequently located) “No. 46, No. 50 and No. 52,” were received in evidence and are in words and figures as follows:

Exhibit No. 46:

Statement. Cleveland, O. 3-21-1916. W. N. Russell Lbr. Co. Big Timber, Mont. In acc't. with The Atlas Oil Company, Lubricating Lard & Miners Oils, Old English Mixed Paints, Ebony Roof Paints. 18-1 gal. outside Old Eng. Pt. White Eng. Pt. @ 140 25.20. 6-1/2 gal. Outside White @ 145 \$4.35. 12-1/2 gal. inside White @ 1.45 \$8.70. 12-1/4 gal. inside White @ 1.50, \$4.50. 6-1 gal. #44 @ 1.40, \$8.40. 6-1 gal. #62 @ 1.40, \$8.40. 6-1 gal.

154 *Scandinavian Am. Bk. of Big Timber, Mont.*

(Testimony of W. N. Russell.)

#63 @ 1.40, \$8.40. 6-1 gal. #57 @ 1.40, \$8.40. 6-1 gal. #59 @ 1.40, \$8.40. 6-1 gal. 65 @ 1.40, \$8.40. 6-1 [59] gal. 46 @ 1.40, \$8.40. 3-1 gal. 27 @ 1.40, \$4.20. 6-1 gal. 23 @ 1.40, \$8.40. 3-1 gal. 51 @ 1.40, \$4.20. 3-1 gal. 84 @ 1.40, \$4.20. 6-1/2 gal. 84, Old Eng. Flat pt. @ 1.45, \$4.35. 6-1 gal. White Old Eng. Pt. @ 1.40, \$8.40. 3-1 gal. tan @ 1.40, \$4.20. 3-1 gal. Eb. Green @ 1.40, \$4.20. 3-5 gal. Red Barn Pt. @ .75, \$11.25. 6-1 gal. Red. Barn Pt. @ .80, \$4.80. 6-1 gal. Old Eng. Perm. floor Finish, @ 1.80, \$10.80. 6-1/2 gal. @ 1.90, \$5.70. 2 1/4 Bls. Outside Pt. @ 1.30, \$78.00 2-5 gal. D R Olive Old Eng. barn Pa. @ 80, \$7.50. 6-1 gal. D. R. Olive Old Eng. Shingle St. @ .80, \$4.80. 6-5 gal. #T 30, @ 80, \$4.00. 6-5 gal. 125, @ .80, \$4.00. 2-5 gal. 127 @ \$8.00. 4 1/4 gal eb. green Old Eng. Carriage @ 1.80, \$1.80. 4-1/4 gal. Vermillion @ 1.80, \$1.80. 4-1/4 gal. Red, @ 1.80, \$1.80. 6-1/8 gal. eb. Oak Old Eng. Varnish @ 1.85, \$1.39. 6-1/8 DK Oak @ 1.85, \$1.39. 6-1/8 DK Cherry @ 1.85, \$1.39. 6-1/8 gal. DK Rosewood Old Eng. Shingle Stain, \$1.39.

Total of bill	\$293.51
8/21 ck. on account	25.00
3/15 Freight Bill received	57.08

\$211.43

11-22-15 on account	25.00
12-11-15 " "	25.00
2- 8-16 " "	7.00

\$154.43

(Testimony of W. N. Russell.)

In the District Court of the United States, for the District of Montana. In the matter of W. N. [60] Russell Lbr. Co., Big Timber, Mont., Bankrupt.

At Cleveland in the county of Cuyahoga and State of Ohio, on the 21st day of March A. D. 1916, came R. A. Walker of Cleveland, in the county of Cuyahoga, and State of Ohio, and made oath, and says, that he is treasurer of the Atlas Oil Co., a corporation incorporated by and under the laws of the State of Ohio, and carrying on business at Cleveland, in the county of Cuyahoga, and State of Ohio, and that he is duly authorized to make this proof, and says that the said W. N. Russell Lbr. Co., the person against whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is justly and truly indebted to said corporation in the sum of one hundred fifty-four and $43/100$ dollars, and interest after —; that the average due date of said claim was —.

That the consideration of said debt is as follows: Merchandise as per statement attached, marked Exhibit "A."

That no part of said debt has been paid (except —); that there are no set-offs or counter-claims to the same (except —); and that said corporation has not, nor has any person by its order or to the knowledge or belief of said deponent, for its use, had or received any manner of security for said debt whatever; that no note has been received for said claim, that no judgment has been rendered thereon, except as herein mentioned. [61]

(Testimony of W. N. Russell.)

The Atlas Oil Company, a corporation organized under and by virtue of the laws of the State of Ohio with its principal place of business located at Cleveland, in the county of Cuyahoga and State of Ohio, by its duly authorized treasurer, does hereby authorize J. B. Selters, attorney of Big Timber, Mont., or any one of them, to attend the meeting or meetings of creditors of the bankrupt aforesaid at a court of bankruptcy, wherever advertised or directed to be holden, on the day and at the hour appointed and notified by said Court in said matter, or at such place and time as may be appointed by the Court for holding such meeting or meetings, or at which such meeting or meetings, or any adjournment or adjournments thereof may be held, and then and there from time to time, and as often as there may be occasion for it and in its name to vote for or against any proposal or resolution that may be then submitted under the acts of Congress relating to bankruptcy; and in the choice of trustee or trustees of the estate of the said bankrupt, and for it to assent to such appointment of trustee, with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the court, which may be held therein for any of the purposes aforesaid; also to accept any composition proposed by said bankrupt in satisfaction of his debts, and to receive payment of dividends and of money due it under any composition, and for any other purpose [62] in its interest whatsoever, with full power of substitution.

In witness whereof, this instrument is signed and

(Testimony of W. N. Russell.)

sealed in the name of said corporation by its treasurer this 21st day of March, 1916.

ATLAS OIL CO. L. S.

By R. A. WALKER,
Treasurer, L. S.

Subscribed and sworn to by said R. A. Walker before me this 21st day of March, A. D. 1916.

[Notarial Seal]

L. A. FREEMAN,
Notary Public.

United States of America,
Northern District of Ohio,—ss.

R. A. Walker, being first duly sworn, deposes and says that the above power of attorney was executed on behalf of a corporation, and that he is a duly authorized officer of said corporation.

R. A. WALKER.

Subscribed and sworn to before me this 21st day of March, A. D. 1916, by the said R. A. Walker, who is personally known to me to be the identical person named.

[Notarial Seal]

L. A. FREEMAN,
Notary Public.

(Back) United States District Court, District of Montana. In the matter of W. N. Russell Lbr. Co. Big Timber, Mont. Bankrupt. Deposition for proof of debt due corporation. Claim, Atlas Oil Co., Cleveland, Ohio. Amount due \$154.43.

Exhibit No. 45:

Freight Bill. Northern Pacific. Big Timber, Mont. Aug. 24, 1915. Station. Consignee W. N.

(Testimony of W. N. Russell.)

[63] Russell Lbr. Co. Freight Bill No. 1235. To Northern Pacific Railway Company, Dr. for charges on articles transported: Waybilled from Selleck Wn. Waybill date and No. 8-14-15 140. Full name of shipper, P. S. L. Co. Car initials and No. 4144. Number of packages, articles and marks: 3000 ft. cedar B siding, 1650 lbs. 125 M star shgs @ 160 Per M 20,000 lbs. rate; 42 freight, 90.95.

Bal. car filled fir lbr. 27,130 lbs. rate, 35, freight, 94.95. Total \$185.90. Lded. full viz copy. Order 3795. Invoice 6748. Received payment 8-25, 1915, Jay Loving, Agent. H.

Pacific States Lumber Co. Mineral Lake Lumber Co., General Offices 822 Tacoma Building, Tacoma, Wash., August 13th, 1915. Sold to W. N. Russell Lumber Co., Big Timber, Montana. Shipped to Same. via NP Invoice No. 6748. Our order No. PS-3795. Buyer's order No. — Salesman's Order No. FWS 20. Car NP 41144/40/80/380/3000. Fir 35¢; cedar 42¢. F O B Terms 2% fifteen days from date of invoice. 1% thirty days or net sixty days from date of invoice. Triplicate.

Orders made to either of these companies are handled in common. Only one account is necessary. Make all remittances read in favor of A. Cookingham, Treasurer.

2	1 x 8	6	#2 Common Shiplap	8
34		8	“ “	181
72		10	“ “	480
283		12	“ “	2,264

(Testimony of W. N. Russell.)

150	14	Common Shiplap	1,400
230	16	“ “	2,453
4	18	“ “	48
1	20	“ “	13

6,847 13.50 92.43

72	1 x 6	8	#1 Common Shiplap	288
184		10	“ “	920
316		12	“ “	1,896
257		14	“ “	1,799
309		16	“ “	2,472
19		18	“ “	171
1		20	“ “	10

7,556 15.75 119.01

110	1/2 x 6	10	Clear R. C. Bevel Siding	550
110		12	“ “	660
110		14	“ “	770
130		16	“ “	1,040

3,020 21.50 64.93

10M Fir Lath 3.50 35.00

125M Extra A R. C.
 Shingles 2.03 253.75.

17,423' \$565.12

Mailed 8-20 B. Car loaded to full visible capacity. B/L attached. Prices O K Extns O K Heading O K B/L O K—M. Weight Gross 86780, Tare 380— Net 48,780.

List: 3020 @ 700—2114; 14403 @ 2000—28806.

(Testimony of W. N. Russell.)

17423.—10 @ 500—5000. 125 @ 160—20,000. Total, 55,920.

Hayden, Langhorne & Metzger, Tacoma Building, Tacoma. In the District Court of the United [65] States, for the District of Montana. In the Matter of W. N. Russell Lumber Company, and W. N. Russell, Bankrupts. (In Bankruptcy.) No. ——. Proof of Claim.

At Tacoma, in the Western District of Washington, on the 30th day of March, 1916, came Albert Cookingham, of Tacoma, in the county of Pierce, State of Washington, and made oath and says: that he is the treasurer of the Pacific States Lumber Company, a corporation incorporated under and by virtue of the laws of the state of Washington, and carrying on business at Tacoma in the county of Pierce and state of Washington; that he is duly authorized to make this proof, and says that the said W. N. Russell Lumber Company, against whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is justly and truly indebted to said corporation in the sum of Three Hundred Seventy-nine and 22/100 (\$379.22) Dollars; that the consideration of said debts is lumber and shingles sold and delivered to the said W. N. Russell Lumber Company as set forth upon the invoice hereto attached; that no part of said debt has been paid, except the sum of One Hundred Eighty-five and 90/100 (\$185.90) Dollars, being the freight upon said shipment of lumber and shingles, and for which credit

(Testimony of W. N. Russell.)

has been given upon the total invoice price of Five Hundred Sixty-five and 12/100 (\$565.12) Dollars; that there are no setoffs or counterclaims to said debt, and [66] that there is now due and owing to the Pacific States Lumber Company the full sum of Three Hundred Seventy-nine and 22/100 (\$379.22) Dollars, and that said corporation has not, nor has any person by its order or to the knowledge or belief of said deponent, for its use had or received any manner of security for said debt whatever.

ALBERT COOKINGHAM.

Treasurer of Pacific States Lumber Company.

Subscribed and sworn to before me this 30th day of March, 191y.

[Notarial Seal]

F. D. METZGER,

Notary Public for the State of Washington, residing at Tacoma.

Letter of Attorney: To Frank Arnold, Esq., Attorney at Law: You are hereby authorized by said creditor to appear for and represent said creditor and vote for said creditor in any proceedings or meetings which may be had or called in the above-entitled proceeding, in court, before the referee in bankruptcy or elsewhere and particularly to vote for said creditor in the choice of a trustee of said bankrupt whenever such election is held, or in your discretion oppose confirmation of any composition offered by or in behalf of said bankrupt, and to receive and receipt for any and all moneys which may be or may become payable said creditor therein or

(Testimony of W. N. Russell.)

17423.—10 @ 500—5000. 125 @ 160—20,000. Total, 55,920.

Hayden, Langhorne & Metzger, Tacoma Building, Tacoma. In the District Court of the United [65] States, for the District of Montana. In the Matter of W. N. Russell Lumber Company, and W. N. Russell, Bankrupts. (In Bankruptcy.) No. ——. Proof of Claim.

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(Testimony of W. N. Russell.)

has been given upon the total invoice price of Five Hundred Sixty-five and 12/100 (\$565.12) Dollars; that there are no setoffs or counterclaims to said debt, and [66] that there is now due and owing to the Pacific States Lumber Company the full sum of Three Hundred Seventy-nine and 22/100 (\$379.22) Dollars, and that said corporation has not, nor has any person by its order or to the knowledge or belief of said deponent, for its use had or received any manner of security for said debt whatever.

ALBERT COOKINGHAM.

Treasurer of Pacific States Lumber Company.

Subscribed and sworn to before me this 30th day of March, 191y.

[Notarial Seal]

F. D. METZGER,

Notary Public for the State of Washington, residing at Tacoma.

Letter of Attorney: To Frank Arnold, Esq., Attorney at Law: You are hereby authorized by said creditor to appear for and represent said creditor and vote for said creditor in any proceedings or meetings which may be had or called in the above-entitled proceeding, in court, before the referee in bankruptcy or elsewhere and particularly to vote for said creditor in the choice of a trustee of said bankrupt whenever such election is held, or in your discretion oppose confirmation of any composition offered by or in behalf of said bankrupt, and to receive and receipt for any and all moneys which may be or may become payable said creditor therein or

(Testimony of W. N. Russell.)

for or on account of said debt.

In witness whereof said creditor has hereunto by its proper officers signed their name and caused their seal to be affixed, when signing the deposition [67] preceding, this 30th day of March, 1916.

PACIFIC STATES LUMBER COMPANY.

By ALBERT COOKINGHAM,

Its Treasurer.

Subscribed and sworn to before me this 30th day of March, 1916.

[Notarial Seal]

F. D. METZGER,

Notary Public in and for said State and County,
residing at Tacoma.

Revenue Stamp.

(Back.) In the United States District Court for the District of Montana. In the Matter of W. N. Russell Lumber Company and W. N. Russell, Bankrupts. Proof of Claim. Frank Arnold and Hayden, Langhorne & Metzger, Attorneys for Claimant.

Exhibit No. 50:

Statement, Bloedel Donovan Lumber Mills. Bellingham, Wash., 1-21-1916. W. N. Russell L. Co., Big Timber, Mont.

Oct. 6 car 29130	527 75	
Less freight pd.	257 10	270 65
“ 28 car 43893	570 86	
Less freight pd.	219 95	350 91
		<hr/>
Balance due		621 56

(Testimony of W. N. Russell.)

In the District Court of the United States, for the District of Montana. In the matter of W. N. Russell doing business under the name and style of W. N. Russell Lumber Company and W. N. Russell as an individual. Bankrupt. In Bankruptcy.

At Bellingham, in the State of Washington, on [68] the — day of March, A. D. 1916, came J. H. Prentice, of Bellingham, in the county of Whatcom, and State of Washington, and made oath and says that he is secretary of the Bloedel-Donovan Lumber Mills, a corporation incorporated by and under the laws of the State of Maine, and carrying on business at Bellingham in the county of Whatcom, and State of Washington, and that he is duly authorized to make this proof, and says that the said W. N. Russell, the person against whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition and still is, justly and truly indebted to said corporation in the sum of Six Hundred Twenty-one and 56/100 (\$621.56) Dollars; that the consideration of said debt is as follows: Goods, *wres* and merchandise sold and delivered to said bankrupt upon open account as per bill of items hereto attached and marked exhibit "A," said goods, wares and merchandise being sold and delivered at the special instance and request of said debtor, together with interest from October 17th, 1915. That the amount of said account is now due. That no part of said debt has been paid—that there are no setoffs or counterclaims to the same—and the said

(Testimony of W. N. Russell.)

corporation has not, nor has any person by its order, or to the knowledge or belief of said deponent, for its use, had or received any manner of security for said debt whatever; and that no note has been received for said debt and no judgment recovered thereon [69] except as herein mentioned:

J. H. PRENTICE,

Secretary of said Corporation.

Subscribed and sworn to before me this 21st day of March, A. D. 1916.

[Notarial Seal]

C. E. CASTLE,

Notary in and for the State of Washington.

United States District Court, District of Montana. Power of Attorney: In the Matter of W. N. Russell doing business under the name and style of W. N. Russell Lumber Company, and W. N. Russell as an individual. Bankrupt.

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, Bloedel-Donovan Lumber Mills, a corporation existing under the laws of the State of Maine hereby makes, constitutes and appoints Frank Arnold, of Livingston, Montana, its true and lawful attorney, for it and in its name, to attend and vote for it at any and all meetings of creditors for the purpose of electing trustees of the estate of said bankrupt, and any and all other purposes; and generally to act for it and to perform any and all acts and things whatsoever necessary or expedient to be done in said matter; and to receive for it payments of dividends or other money due, or to be-

(Testimony of W. N. Russell.)

come due to it; to make and consent for it to any and all compositions in said matter as he shall deem for its best interests; hereby granting unto our said attorney full and complete power to do and perform any and all things pertaining to said matter the same as if it were present by its proper [70] officers.

In Witness Whereof, It has caused these presents to be signed in its corporate name by its President and its corporate seal to be hereto attached by authority of its Board of Directors, this 21st day of March, 1916.

Signed, sealed and delivered in presence of J. K. Kellyms, F. L. Mickle.

[Notarial Seal.]

BLOEDEL-DONOVAN LUMBER MILLS.

By J. H. BLOEDEL,

President.

State of Washington,
County of Whatcom,—ss.

On this 21st day of March, 1916, before me appeared J. H. Bloedel, to me personally known, who, being by me duly sworn, did say that he is the President of Bloedel-Donovan Lumber Mills, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was executed in behalf of said corporation by authority of its Board of Directors; and the said J. H. Bloedel acknowledged said instrument to be the free

(Testimony of W. N. Russell.)

act and deed of said corporation.

C. E. CASTLE,

Notary Public Whatcom County, State of Wash-
ington.

My commission expires September 14, 1917. (No-
tarial seal.)

Exhibit No. 52:

McCormick, Wash., 12-12-1915. W. N. Russell
Lbr. Co., Big Timber, Mont. In account with Mc-
Cormick Lumber Co. [71]

May 20	22850		739 29	
		Freight	197 54	541 75
“ 25	45373		427 75	
		“	189 —	238 75
				<hr/>
				780 50
ck recd	30 50			
“	32 50			
	<hr/>			
	63 00			
Protested ck				
and charges 33				30 00
				<hr/>
				750 50

In the District Court of the United States, for the
District of Montana. In the matter of W. N. Rus-
sell doing business under the name and style of W. N.
Russell Lumber Company, and W. N. Russell as an
individual. Bankrupt. In Bankruptcy.

At McCormick, in the State of Washington, on the
27th day of March, A. D. 1916, came A. N. Riggs,
of McCormick, in the county of Lewis and State of

(Testimony of W. N. Russell.)

Washington, and made oath and says that he is treasurer of the McCormick Lumber Company, a corporation incorporated by and under the laws of the State of and carrying on business at McCormick in the county of Lewis and State of Washington, and that he is duly authorized to make this proof, and says that the said W. N. Russell, the person against whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said corporation in the sum of Seven Hundred [72] Fifty and 50/100 (\$750.50) Dollars; that the consideration of said debt is as follows: Goods, wares and merchandise sold and delivered to said bankrupt upon open account as per bill of items hereto attached and marked exhibit "A," said goods, wares and merchandise being sold and delivered at the special instance and request of said debtor, together with interest from May 22, 1915. That the amount of said account is now due. That no part of said debt has been paid—that there are no setoffs or counterclaims to the same—and that said corporation has not, nor has any person by its order, or to the knowledge or belief of said deponent, for its use, had or received any manner of security for said debt whatever; and that no note has been received for said debt and no judgment recovered thereon except as herein mentioned.

A. N. RIGGS,

Treasurer of said Corporation.

(Testimony of W. N. Russell.)

Subscribed and sworn to before me this 27th day of March, A. D. 1916.

[Seal]

GEO. D. McCORMICK,
Notary Public.

United States District Court, District of Montana.
Power of Attorney. In the Matter of W. N. Russell doing business under the name and style of W. N. Russell Lumber Company, and W. N. Russell as an individual. Bankrupt.

KNOW ALL MEN BY THESE PRESENTS: That the undersigned McCormick Lumber Company, a corporation existing under the laws of the State of Oregon hereby makes, constitutes and appoints Frank Arnold [73] of Livingston, Montana, its true and lawful attorney, for it and in its name, to attend and vote for it at any and all meetings, of creditors for the purpose of electing trustees of the estate of said bankrupt, and any and all other purposes; and generally to act for it and to perform any and all acts and things whatsoever necessary or expedient to be done in said matter; and to receive for it payments of dividends or other money due, or to become due it; to make and consent for it to any and all compositions in said matter as he shall deem for its best interests; hereby granting unto our said attorney full and complete power to do and perform any and all things pertaining to said matter the same as if it were present by its proper officers.

In Witness Whereof, It has caused these presents to be signed in its corporate name by its vice-president, and its corporate seal to be hereto attached by

(Testimony of W. N. Russell.)

authority of its board of directors, this 27th day of March, 1916.

McCORMICK LUMBER COMPANY.

By GEO. D. McCORMICK,

Vice-president.

Signed, sealed and delivered in presence of John Leigh, J. F. Longhron, Jr.

State of Washington,

County of Lewis.

On this 27th day of March, 1916, before me appeared Geo. D. McCormick, to me personally known, who, being by me duly sworn, did say that he is the vice-president of McCormick Lumber Company, that [74] the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was executed in behalf of said corporation by authority of its Board of Directors; and the said Geo. D. McCormick acknowledged said instrument to be the free act and deed of said corporation.

SILAS SAGE,

Notary Public, Lewis County, State of Washington.

My commission expires —, 19—.

Q. Drawing your attention to "Exhibit No. 53," the account of the Central Door & Lumber Co., I will ask you what was the amount of the account due and owing those people at the time you filed this petition in bankruptcy? A. \$528.94.

Q. State whether or not that was for merchandise sold prior to the giving of the chattel mortgage or after—purchased and received. A. Yes.

(Testimony of W. N. Russell.)

Q. When?

A. It was received before the giving of the chattel mortgage.

Q. State whether or not that amount was due and owing at the time the mortgage was given from you to the Central Door and Lumber Company.

A. Yes, sir.

Mr. ARNOLD.—I offer “Exhibit 53” in evidence.

Mr. CAMPBELL.—We make the same objection.

The COURT.—The objection will be overruled.

[75]

To which ruling of the Court, an exception was duly reserved.

Whereupon “Exhibit No. 53” was received in evidence and is in words and figures as follows:

Portland, Oregon. W. N. Russell, Big Timber, Mont. In account with Central Door & Lumber Co.		
Mar. 26,	406.75	
Apr. 29,	243 14	
30,	66 25	716 14
	Cr	
Apr. 8	Mdse	187 20
Bal.		528 94

In the District Court of the United States, for the District of Montana. In the matter of W. N. Russell doing business under the name and style of W. N. Russell Lumber Company, and W. N. Russell as an individual, Bankrupt. In Bankruptcy.

At Portland, in the State of Oregon, on the 20th day of March, A. D. 1916, came R. N. Banks (or

(Testimony of W. N. Russell.)

Parks) of Portland, in the county of Multnomah and State of Oregon, and made oath and says that he is treasurer of the Central Door & Lumber Company a corporation incorporated by and under the laws of the State of Oregon, and carrying on business at Portland in the county of Multnomah and State of Oregon, and that he is duly authorized to make this proof, and says that the said W. N. Russell, the person against whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still [76] is, justly and truly indebted to said corporation in the sum of Five Hundred Twenty-eight and $94/100$ (\$528.94) dollars; that the consideration of said debt is as follows: Goods, wares and merchandise sold and delivered to said bankrupt upon open account as per bill of items hereto attached and marked exhibit "A," said goods, wares and merchandise being sold and delivered at the special instance and request of said debtor, together with interest from 8th day of April, 1915. That the amount of said account is now due. That no part of said debt has been paid—that there are no setoffs or counterclaims to the same—and that said corporation has not, nor has any person by its order, or to the knowledge or belief of said deponent, for its use, had or received any manner of security for said debt whatever; and that no note has been received for said debt and no judgment recovered thereon except as herein mentioned.

[Notarial Seal]

R. N. PARKS,

Treasurer of said Corporation.

(Testimony of W. N. Russell.)

Subscribed and sworn to before me this 20th day of March.

W. W. WOODCOCK,
Notary Public.

My commission expires September 2, 1916.

United States District Court; District of Montana.
Power of Attorney. In the matter of W. N. Russell *Lumber* doing business under the name and style of W. N. Russell Lumber Company and W. N. Russell as an individual. Bankrupt.

KNOW ALL MEN BY THESE PRESENTS:
That the undersigned [77] Central Door & Lumber Company, a corporation, existing under the laws of the State of Oregon hereby makes, constitutes and appoints Frank Arnold of Livingston, Montana, its true and lawful attorney, for it and in its name, to attend and vote for it at any and all meetings of creditors for the purpose of electing trustees of the estate of said bankrupt, and any and all other purposes; and generally to act for it and to perform any and all acts and things whatsoever necessary or expedient to be done in said matter; and to receive for it payments of dividends or other money due, or to become due it; to make and consent for it to any and all compositions in said matter as he shall deem for its best interests; hereby granting unto our said attorney full and complete power to do and perform any and all things pertaining to said matter the same as if it were present by its proper officers.

In Witness Whereof, It has caused these presents

(Testimony of W. N. Russell.)

to be signed in its corporate name by its President and its corporate seal to be hereto attached by authority of its Board of Directors, this 20th day of March, 1916.

[Corporate Seal]

CENTRAL DOOR & LUMBER CO.

By A. F. BILES,
President.

Signed, sealed and delivered in presence of

_____.

State of Oregon,

County of Multnomah,—ss.

On this 20th day of March, 1916, before me appeared [78] A. F. Biles, to me personally known, who, being by me duly sworn, did say that he is the president of Central Door & Lumber Company; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was executed in behalf of said corporation by authority of its Board of Directors; and the said A. F. Biles acknowledged said instrument to be the free act and deed of said corporation.

[Seal]

W. W. WOODCOCK,

Notary Public Multnomah County, State of Oregon.

My commission expires Sept. 2, 1916.

Q. Drawing your attention now to "Exhibit No. 54," or proof of claim, of the Dakota Plaster Co., and I will ask you the amount of that claim.

A. \$49.40.

Q. State whether or not that was the amount that

(Testimony of W. N. Russell.)

was due at the time you filed your petition in bankruptcy—and owing. A. Yes, sir.

Q. Now, state, Mr. Russell, whether the merchandise that that represented was merchandise that was purchased before you gave the chattel mortgage or after. A. That was after.

Q. And what was the date that you bought that?

A. March 6, 1916.

Q. No.

A. Isn't it? Oh—that is a statement—it was the 8th month, 25—1915. [79]

Q. That would be the 25th day of August, would it?

A. Yes, sir.

Q. State whether that merchandise purchased from the Dakota Plaster Co. was received by you and taken into your business and used in your business in Big Timber. A. It was.

Mr. ARNOLD.—I offer in evidence “Exhibit 54.”

Mr. MILLER.—I think that is clearly objectionable. We object to it for the same reason as to the previous offerings.

The COURT.—The objection will be overruled.

To which ruling of the Court, an exception was duly reserved.

Whereupon “Exhibit No. 54” was received in evidence and is in words and figures as follows:

Rapid City, S. D. March 6, 1916. W. N. Russell Lumber Co., Big Timber, Mont. To Dakota Plaster Co.

(Testimony of W. N. Russell.)

Dr.			
8—25—15	Car #74724		\$131.50
Credit:			
	Freight	\$14.00	
	“	60.00	
10—26—15	Bags returned	10.00	84.00
			<hr/>
			\$47.50
Int. 6 mos. 8%			1.90
			<hr/>
			\$ 49.40

*In the District Court of the United States, for the
District of Montana.*

In the Matter of W. N. RUSSELL, Doing Business Under the Firm Name and Style [80] of W. N. RUSSELL LUMBER COMPANY and W. N. RUSSELL, as an Individual, Bankrupt.

IN BANKRUPTCY.

At Rapid City, in the State of South Dakota, on the 29th day of March, A. D. 1—, came A. M. Lanphere of Rapid City, in the county of Pennington, and State of South Dakota, and made oath and says that he is Treasurer of the Dakota Plaster Company, a corporation incorporated by and under the laws of the State of South Dakota, and carrying on business at Rapid City in the county of Pennington, and State of South Dakota, and that he is duly authorized to make this proof, and says that the said W. N. Rus-

(Testimony of W. N. Russell.)

sell, the person against whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said corporation in the sum of Forty-seven and 50/100 (\$47.50) dollars; that the consideration of said debt is as follows: Goods, wares and merchandise sold and delivered to said bankrupt upon open account as per bill of items hereto attached and marked Exhibit "A," said goods, wares and merchandise being sold and delivered at the special instance and request of said debtor, together with interest from the 25th day of August, 1915. That the amount of said account is now due. That no part of said debt has been paid; that there are no set-offs or counterclaims to the same; and that said corporation has not, nor has any person by its order, or to the knowledge or belief of said [81] deponent, for its use, had or received any manner of security for said debt whatever; and that no note has been received for said debt and no judgment recovered thereon except as herein mentioned.

A. M. LANPHERE,
Secretary of Said Corporation.

Subscribed and sworn to before me this 27th day of March, A. D. 1916.

[Seal]

C. N. LAWS,
Notary Public.

United States District Court; District of Montana; Power of Attorney. In the matter of W. N. Russell, doing business under the name and style of W. N.

(Testimony of W. N. Russell.)

Russell Lumber Company, and W. N. Russell as an individual, Bankrupt.

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, Dakota Plaster Company, a corporation, existing under the laws of the State of South Dakota, hereby makes, constitutes and appoints Frank Arnold, its true and lawful attorney, for it and in its name, to attend and vote for it at any and all meetings of creditors for the purpose of electing trustees of the estate of said bankrupt, and any and all other purposes; and generally to act for it and to perform any and all acts and things whatsoever necessary or expedient to be done in said matter; and to receive for it payments of dividends or other money due, or to become due it; to make and consent for it to any and all compositions in said matter as he shall deem for its best interests; hereby granting unto our said attorney full and [82] complete power to do and perform any and all things pertaining to said matter the same as if it were present by its proper officers.

In Witness Whereof, It has caused these presents to be signed in its corporate name by its President and its corporate seal to be hereto attached by authority of its Board of Directors, this 25th day of March, 1916.

[Seal] DAKOTA PLASTER COMPANY.

By JOSEPH JAY,
President.

Signed, sealed and delivered in presence of Juale E. Cleghour, Fred C. McCain.

(Testimony of W. N. Russell.)

State of South Dakota,
County of Pennington,—ss.

On this 27th day of March, 1916, before me appeared Joseph Jay to me personally known, who, being by me duly sworn, did say that he is the president of Dakota Plaster Company; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was executed in behalf of said corporation by authority of its board of directors; and the said Joseph Jay acknowledged said instrument to be the free act and deed of said corporation.

C. N. LAWS,
Notary Public Pennington County, State of South
Dakota.

My commission expires May 6, 1919.

Q. Drawing your attention to "Exhibit No. 47," the claim of the Eureka Lumber Company, as shown by the copy of the note attached to the claim; state whether that note was given for merchandise [83]; that was purchased before you gave the chattel mortgage. A. It was.

Q. And state the amount that was due at the time you gave the chattel mortgage to the Eureka Lumber Company as shown by that note. A. \$681.06.

Q. Do you know what part of that has been paid since the giving of the chattel mortgage?

A. July 10th, \$182.51, paid. July 20, \$50—July 30, \$48.55—December 2, 1915, \$50—January 13, 1916, \$30.

Q. The balance then is owing, or was owing at the

(Testimony of W. N. Russell.)

time that you filed your petition in bankruptcy, was it? A. Yes, sir.

Q. Now, drawing your attention to "Exhibit No. 55," Mr. Russell, the account of the McKee Lumber Company: will you state the amount that was due at the time you filed your petition in bankruptcy?

A. \$494.64.

Q. And unpaid at that time? A. Yes, sir.

Q. Now a debt, is it? A. Yes, sir.

Q. Will you state when the merchandise was purchased that that account represents?

A. August 26, \$——August 26, 1915 and September 18th, 1915.

Q. What credits has there been in that account?
[84]

A. The freight has been deducted.

Q. State whether or not the merchandise that was represented—purchased from the McKee Lumber Co. on the dates that you've stated was received in the lumber yards of the Russell Lumber Company and used in its business. A. It was.

Q. You stated that those two purchases were made August 26 and September 18th: Now, is that correct? Shouldn't that be, the purchase August 26 and October 25 and the freight paid September 18 and November 18th? A. Yes. Yes.

Q. All in 1915? A. Yes, sir.

Mr. ARNOLD.—I offer "Exhibit 55" in evidence.

Mr. CAMPBELL.—We make the same objection.

The COURT.—The objection will be overruled.

(Testimony of W. N. Russell.)

To which ruling of the Court, and exception was duly reserved.

Whereupon "Exhibit No. 55" was received in evidence and is in words and figures as follows:

Seattle, Wash., Dec. 20, 1915. W. N. Russell Lbr. Co., Big Timber, Mont., In account with McKee Lbr. Co.

	Invoice.	Car,		
Aug. 26	3938	NP 85746	417.83	
Sep. 18			E B	224 70
Oct. 25	4042	NP 47340	544 76	
Nov. 18			E B	243 25
	Balance due us			494 64
			<hr/>	<hr/>
			962 59	962 59
Dec. 20	Balance due		494 64	

[85]

United States District Court, District of Montana, Power of Attorney. In the Matter of W. N. Russell, doing business under the name and style of W. N. Russell Lumber Company, and W. N. Russell, as an individual. Bankrupt:

KNOW ALL MEN BY THESE PRESENTS, That the undersigned W. I. McKee hereby makes, constitutes and appoints Frank Arnold of Livingston, Montana, his true and lawful attorney, for him and in his name, to attend and vote for him at any and all meetings of creditors for the purpose of electing trustees of the estate of said bankrupt, and any and all other purposes; and generally to act for him and to perform any and all acts and things

(Testimony of W. N. Russell.)

whatsoever necessary or expedient to be done in said matter; and to receive for him payments of dividends or other money due, or to become due him; to make and consent for him to any and all composition in said matter as he shall deem for his best interests; hereby granting unto my said attorney full and complete power to do and perform any and all things pertaining to said matter the same as if I were present.

In witness whereof I have hereunto signed my name this 27th day of March, 1917.

W. I. McKEE.

Signed, sealed and delivered in presence of J. W. Jones, W. R. Swift.

State of Washington,
County of King,—ss.

On this 27th day of March, 1916, before me appeared [86] W. I. McKee, to me personally known, who, being by me duly sworn, did say that he is the person named, in, and who executed the foregoing instrument and acknowledged said instrument to be his free act and deed.

[Seal] CHAUNCY L. BAXTER,
Notary Public King County, State of Washington.

My commission expires 3/3—1918.

Q. Your attention was drawn this morning to "Exhibit No. 49," the account of the Eclipse Paint and Manufacturing Co. I think you stated that that merchandise was purchased before the giving of the chattel mortgage. A. Yes.

Q. Can you state now what was the amount that

(Testimony of W. N. Russell.)

was due at the time you filed your petition in bankruptcy? A. \$141.05.

Q. That was unpaid, was it? A. Yes, sir.

Q. That would, of course, be due, at the time that you gave the chattel mortgage then.

A. Yes, sir.

Mr. ARNOLD.—I offer in evidence “Exhibit 49.”

Mr. CAMPBELL.—We make the same objection.

The COURT.—The objection will be overruled.

To which ruling of the Court an exception was duly reserved.

Thereupon “Exhibit No. 49” was received in evidence and is in words and figures, as follows: [87]

The Eclipse Paint and Mfg. Co. Order No. a 61322, via. Pena. Salesman: Thomas. Terms 2% 30 Da. 90 Da. Net. Sold to Russell Lumber Co., Big Timber Sweet Grass Co., Mont. Route C. M. & St. P. No. Pac. Due 7—13—1915,

1 half bbl grapholastic in steel				
bbl 38½ gal	80	30	80	
6 2-5 cases grapholastic 60 gal.	80	48	00	
24 1 gal cans grapholastic	80	19	20	
1 half bbl armorcote 390#	11	42	90	
2 2-5 cases kemisoris slate				
	20	“1	20	24 00
12 1 gal cans kemisoris slate	1	20	14	40
				179 30
Credit				38 25
				<hr/>
				141 05

In the District Court of the United States for the
 — District of ———, ——— Division.

(Testimony of W. N. Russell.)

In the matter of Russell Lumber Co., Bankrupt. In Bankruptcy. No. ——. Proof of Claim.

At Cleveland, in the County of Cuyahoga and State of Ohio, on the 31st day of March, A. D. 1916, before me, Frank H. Murphy, a Notary Public, came F. T. Jamieson, of Cleveland, in the county of Cuyahoga, and State of Ohio, and made oath, and says:

That he is treasurer of The Eclipse Point & Mfg. Co., a corporation, incorporated by and under the laws of the State of Ohio, and carrying on business at Cleveland, in the county of Cuyahoga, and State of Ohio, and that he is duly authorized to make this proof;

That he is one of the firm of _____ consisting of deponent and _____ of _____, in the County of _____, and State of _____. That he is the attorney, _____, of _____, of _____, in the County of _____, and State of _____. [88]

That the Russell Lumber Co., the person by _____, whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said deponent in the sum of one hundred forty-one and 5/100 dollars, with interest from — at — per cent per annum; that the consideration of said debt is as follows: goods and merchandise sold and delivered as per invoice attached; that no part of said debt has been paid, except—that there are no set-offs or counterclaims to the same (except_____

That said claim consists of an open account—

(Testimony of W. N. Russell.)

due on ———; that no note has been received for such account, nor has any judgment been rendered thereon.

That the only securities held by ————— for said debt are the following:

That said deponent has not, nor any person by his order or to the knowledge or belief of said deponent, for his use had or received any manner of security for said debt whatever.

And this deponent further says that this deposition cannot be made by the claimant in person because ————— and that he is duly authorized by his principal to make this affidavit, and that it is within his knowledge that the aforesaid debt was incurred as and for the consideration above stated, and that such debt, to the best of his knowledge and belief, still remains unpaid and unsatisfied.

[Seal]

F. T. JAMIESON.

Subscribed and sworn to before me this 31st day
[89] of March, A. D. 1916.

F. H. MURPHY,
Notary Public.

Power of Attorney:

KNOW ALL MEN BY THESE PRESENTS,
That the undersigned, having full authority to represent the claim duly proven within, do make, constitute and appoint Frank Arnold, Attorney, of Livingston, Mont., my true and lawful attorney, for me and in my name, place and stead, to attend and vote at any and all meetings of creditors for the purpose of electing trustee or trustees, or any other pur-

(Testimony of W. N. Russell.)

pose, and generally to do and perform all and every act and thing whatsoever requisite and necessary to be done in the premises to secure my best interests, and do hereby revoke any and all other like authority heretofore given to any other person or persons.

In Witness Whereof I have hereunto signed my name and affixed my seal the 31st day of March, A. D. 1916.

[Seal]

F. T. JAMIESON,

Signed, sealed and delivered in presence of

_____.

Acknowledged before me this 31st day of March, A. D. 1916.

[Seal]

F. H. MURPHY,

Notary Public.

Q. Drawing your attention to "Exhibit No. 56," the proof of claim of Montana Coal & Iron Company, I will ask you at the time that you filed your petition in bankruptcy how much was due to the Montana Coal and Iron Company? A. \$162.92.

Q. That was unpaid at that time? [90]

A. Yes.

Q. Will you state whether or not that was for merchandise that was purchased subsequent to the giving of the chattel mortgage or before?

A. It was after.

Q. State whether or not the merchandise was received in your yard and used in the course of your business at Big Timber. A. It was.

Mr. ARNOLD.—I offer "Exhibit 56" in evidence.

Mr. CAMPBELL.—We make the same objection.

(Testimony of W. N. Russell.)

The COURT.—The objection will be overruled.

To which ruling of the Court, an exception was duly reserved.

Whereupon “Exhibit No. 56” was received in evidence and is in words and figures as follows:

In account with Montana Coal & Iron Company, Washoe, Mont., 3-8-1916. W. N. Russell Lbr. Co. Big Timber.

		Car	Kind					
Jul.	15.	27599	NP Egg	81000#	2 15	87	08	
“	31.	55662	“ Lump	85200	2 40	102	24	
Aug.	11.	47629	“ “	81600	2 75	112	20	
Sep.	23.	553772	PRR “	60000	2 75	82	50	
Oct.	5.	53443	PM Egg	74400	2 00	74	40	
							458	42
Credit								
Sep.	30.	Cash				82	50	
Oct.	5.	“				200	00	
	20.	Demurrage				13	00	
	20.	Balance				162	92	
							458	42

In the District Court of the United States, for the District of Montana. In the matter of W. N. Russell doing business under the name and style of W. N. Russell Lumber Company and W. N. [91] Russell as an individual. Bankrupt. In Bankruptcy.

At Washoe, in said district of Montana, on the — day of March, A. D. 1916, came J. M. Freeman, of Washoe, in the county of Carbon, and State of

(Testimony of W. N. Russell.)

Montana and made oath and says that he is Manager of the Montana Coal & Iron Company, a corporation incorporated by and under the laws of the State of ——— and carrying on business at Washoe in the county of Carbon and State of Montana, and that he is duly authorized to make this proof, and says that the said W. N. Russell, the person against whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still, is, justly and truly indebted to said corporation in the sum of One hundred sixty-two and 92/100 (\$162.92) dollars; that the consideration of said debt is as follows: Goods, wares and merchandise sold and delivered to said bankrupt upon open, account as per bill of items hereto attached and marked Exhibit "A," said goods, wares and merchandise being sold and delivered at the special instance and request of said debtor, together with interest from August 20, 1915. That the amount of said account is now due. That this proof is made to this affiant for the reason that he is entirely familiar with the accounts of said company at Washoe Montana, and the officers of the said company reside out of and are absent from the State of Montana. That no part of said debt has been paid; that there are no set-offs or counterclaims [92] to the same; and that said corporation has not, nor has any person by its order, or to the knowledge or belief of said deponent, for its use, had or received any manner of security for said debt whatever; and that no note has been received for said

(Testimony of W. N. Russell.)

debt and no judgment recovered thereon except as herein mentioned.

J. M. FREEMAN,
Manager of said Corporation.

Subscribed and sworn to before me this 22d day of March, A. D. 1916.

[Seal]

P. J. EGAN,
Notary Public.

My commission expires 4-4-1916.

In the United States District Court; District of Montana. Power of Attorney.

In the Matter of W. N. Russell doing business under the name and style of W. N. Russell Lumber Company and W. N. Russell as an individual. Bankrupt.

KNOW ALL MEN BY THESE PRESENTS: That the undersigned Montana Coal & Iron Company, a corporation, existing under the laws of the State of _____ hereby makes, constitutes and appoints Frank Arnold, of Livingston, Montana, its true and lawful attorney, for it and in its name, to attend and vote for it at any and all meetings of creditors for the purpose of electing trustees of the estate of said bankrupt, and any and all other purposes; and generally to act for it and to perform any and all acts and things whatsoever necessary or expedient to be done in said matter; and to receive for it payments of dividends or other money due, or to [93] become due it; to make and consent for it to any and all compositions in said matter as he shall deem for its best interests; hereby granting unto our

(Testimony of W. N. Russell.)

said attorney full and complete power to do and perform any and all things pertaining to said matter the same as if it were present by its proper officers.

In witness whereof it has caused these presents to be signed in its corporate name by its manager and its corporate seal to be hereto attached by authority of its Board of Directors, this — day of March, 1916.

MONTANA COAL & IRON COMPANY,
By J. M. FREEMAN,
Manager.

Signed, sealed and delivered in presence of C. F. Allen.

State of Montana,
County of Carbon,—ss.

On this 22d day of March, 1916, before me appeared ————— to me personally known, who, being by me duly sworn, did say that he is the manager of Montana Coal & Iron Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was executed in behalf of said corporation by authority of its Board of Directors; and the said ————— acknowledged said instrument to be the free act and deed of said corporation.

P. J. EGAN,
Notary Public Carbon County, State of Montana.

My Commission expires 4-4-1916. [94]

Q. Drawing your attention to "Exhibit No. 57," the Account of the Pacific Lumber Agency, I will ask you how much was due and owing on that ac-

(Testimony of W. N. Russell.)

count at the time you filed your petition in bankruptcy? A. \$460.14.

Q. That was unpaid then, was it? A. Yes.

Q. State whether or not that was for lumber purchased before or after you gave the chattel mortgage.

A. Before.

Q. Then it was a debt due at the time that you gave the chattel mortgage? A. Yes, sir.

Mr. ARNOLD.—I offer “Exhibit 57” in evidence.

Mr. CAMPBELL.—We make the same objection.

The COURT.—The objection will be overruled.

To which ruling of the Court, an exception was duly reserved.

Whereupon “Exhibit No. 57” was received in evidence and is in words and figures as follows:

Pacific Lumber Agency, Reference 19772. Aberdeen, Washington, June 7th, 1915. Sold to W. N. Russell Lumber Co., Big Timber, Montana. Shipped to, same. Shipped by Pacific Lumber Agency, Routing, N. P. Prices F. O. B. 35 and 42¢ rates. Agency Order No. 5720. Salesman No. and Name Harris 8. Car. No. 47629 N. P.

21,427 ft. Lumber	500.25
102 M Extra Star A Star Red Cedar Shgls	211.14
	<hr/>
	\$711.39

[95]

June 29, 1915—Credit freight	\$251.25
Balance	\$460.14

(Testimony of W. N. Russell.)

State of Washington,
County of Grays Harbor,—ss.

A. L. Davenport, being first duly sworn upon oath, deposes and says: That he is Manager of the Pacific Lumber Agency, a corporation organized and existing under the laws of the State of Washington, having its principal place of business at Aberdeen, in said State. That the foregoing is a true and correct statement of the account of W. N. Russell Lumber Co., as the same appears on the books of said Pacific Lumber Agency; that the above mentioned sum of Four hundred sixty and 14-100 Dollars (\$460.14) represents the actual amount now due and owing the said Pacific Lumber Agency by the said W. N. Russell Lumber Co., that there are no just credits or offsets against said account, except as shown in the foregoing statement; that the said Pacific Lumber Agency holds no security for the payment of above account.

A. L. DAVENPORT.

Subscribed and sworn to before me this 17th day of March, A. D. 1916.

W. B. PAINE,

Notary Public in and for the State of Washington,
residing at Aberdeen in said State.

In the District Court of the United States, for the District of Montana. In the matter of W. N. Russell doing business under the name and style of W. N. Russell Lumber Company and W. N. Russell [96] as an individual. Bankrupt.

(Testimony of W. N. Russell.)

At Aberdeen in the State of Washington, 27th March, 1916, came A. L. Davenport of Aberdeen in the county of Grays Harbor, State of Washington and made oath as follows: That he is acting treasurer of Pacific Lumber Agency, a corporation organized and existing under and by virtue of the laws of the State of Washington and carrying on business at Aberdeen, county of Grays Harbor, State of Washington, the claimant herein.

That he is duly authorized to make this proof that the said W. N. Russell the person against whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition and still is justly and truly indebted to said claimant in the sum of four hundred and sixty dollars and fourteen cents (\$460.14), with interest thereon at the rate of 8 per cent per annum from July 7, 1915.

The consideration of said debt is as follows: goods, wares and merchandise sold and delivered by the said claimant to said bankrupt at his special instance and request, as per itemized statement hereto attached and made a part hereof, marked exhibit "A."

That no part of said debt has been paid. That said debt became due on the 7th day of July, 1915. That there are no setoffs or counterclaims to said debt, that no note has been taken or received and no judgment has been rendered for said indebtedness [97] or any part thereof. That this affiant has not nor has the claimant on whose behalf this proof is made, nor any person on behalf of them or any or either of them, to this affiant's knowledge or belief,

(Testimony of W. N. Russell.)

had or received any manner of security for said debt or any part thereof.

A. L. DAVENPORT,
Acting Treasurer.

Subscribed and sworn to before me this 27th day of March, 1916.

[Seal]

W. B. PAINE,
Notary Public, State of Washington.

My commission expires 8th day of April, A. D. 1919.

In the District Court of the United States for the District of Montana. Power of Attorney.

In the matter of W. N. Russell doing business under the name and style of W. N. Russell Lumber Company and W. N. Russell as an individual. Bankrupt.

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, claimant herein, does hereby make, constitute and appoint Frank Arnold of Livingston, State of Montana our true and lawful attorney, for us and in our name and place to attend and vote at any and all meetings of creditors, in bankruptcy or otherwise for the purpose of electing a trustee or for any other purpose; to attend and act at all sittings of Court, to accept in writing any proposition of compromise submitted; to receive payment of dividends or moneys due under composition and receipt therefor; and generally to do and [98] perform all and every act and thing whatsoever, requisite and necessary to be done in the premises, with as full powers as the undersigned would have if

(Testimony of W. N. Russell.)

in each case present. Full power of substitution is hereby granted and any and all other like authority hereto given is hereby revoked.

The referee is hereby directed to send to you all necessary notices.

In the presence of A. L. Davenport,

PACIFIC LUMBER AGENCY,

By E. HULBERT,

President.

State of Washington,
County of Grays Harbor,

On this 27th day of March 1916, before me personally appeared E. Hulbert, to me personally known, who being duly sworn did depose and say that he is President of the Pacific Lumber Agency, a corporation, the claimant herein; that he executed the foregoing power of attorney on behalf of said claimant and that he is duly authorized and empowered so to do.

[Notarial Seal]

E. H. TANNER,

Notary Public for the State of Washington. Residing at Aberdeen, Washington.

My commission expires Jan. 1918.

Q. Drawing your attention to "Exhibit No. 58," the proof of claim of the Standard Paint Co. State what the amount due and owing to those people was at the time you filed your petition in bankruptcy.

A. \$177.93.

Q. Was that for merchandise purchased before or after [99] the giving of the chattel mortgage to the bank. A. It was after.

(Testimony of W. N. Russell.)

Q. Can you give the date of it? A. 11-24-1915.

Q. Was that merchandise that was received and used in the regular course of your business at Big Timber? A. Yes, sir.

Mr. ARNOLD.—I offer “Exhibit 58” in evidence.

Mr. CAMPBELL.—We make the same objection.

The COURT.—The objections will be overruled.

To which ruling of the Court, an exception was duly reserved.

Whereupon “Exhibit No. 58” was received in evidence and is in words and figures as follows:

New York, 11-24-15. No. Chi 3592. W. N. Russell Lumber Company, Big Timber, Mont. The Standard Paint Company, General Offices: Woolworth Building, New York. Terms 30 days dating 2% 30 days 60 days net F. O. B. Livingston.

25	100	squares	rolls	#7	SPC	waterproof	felt		
								2	33
									58
									25
30	30	“		1	ply	imp	roofing		
								1	19
									35
									70
20	20			2	“	imp	roofing		
								1	47
									29
									40
20	20			3	“	imp	roofing		
								1	75
									35
									00
30	30			2	“	rubberoid	roofing		
								2	32
									69
									60
									227
									95
		freight							
									50
									02
		Duplicate							
									177
									93

Marks Shipped from C H via with chi-3893.

Monthly Statement.

(Testimony of W. N. Russell.)

New York, Feb. 17, 1916. W. N. Russell Lbr. Co.
[100] Big Timber, Montana. To the Standard
Paint Company, Dr. Woolworth Building.

Nov. 24 to Mdse 30 da. @2/60 227 95

Cr. Dec. 20, By freight 50 02 \$177 93

In the District Court of the United States, for the District of Montana. In the Matter of W. N. Russell, doing business under the name and style of W. N. Russell Lumber Company, and W. N. Russell as an individual. Bankrupt. In Bankruptcy.

At New York, in the State of New York, on the 4th day of April, A. D. 1916, came Felix Jellenik, of New York, in the County of New York, and State of New York, and made oath and says that he is Treasurer of the Standard Paint Company, a corporation incorporated by and under the laws of the State of New Jersey, and carrying on business at New York, in the county of New York, and State of New York, and that he is duly authorized to make this proof, and says that the said W. N. Russell, the person against whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said corporation in the sum of One Hundred Seventy-seven and 93/100 (\$177.93) Dollars. That the consideration of said debt is as follows: Goods, wares and merchandise sold and delivered to said bankrupt upon open account as per bill of items hereto attached and marked Exhibit "A," said goods, wares and merchandise being sold and

(Testimony of W. N. Russell.)

delivered at the special instance and request of [101] said debtor, together with interest from the 24th of December, 1915. That the amount of said account is now due. That no part of said debt has been paid. That there are no set-offs or counter-claims to the same. And that said corporation has not, nor has any person by its order, or to the knowledge or belief of said deponent, for its use, had or received any manner of security for said debt whatever; and that no note has been received for said debt and no judgment recovered thereon except as herein mentioned.

FELIX JELLENIK,
Treasurer of Said Corporation.

Subscribed and sworn to before me this 4th day of April, A. D. 1916.

A. E. HASKINS,
Notary Public, Kings County.

Certificate filed in New York County. New York Register's Office.

In the District Court of the United States, District of Montana. Power of Attorney.

In the Matter of W. N. Russell, doing business under the name and style of W. N. Russell Lumber Company, and W. N. Russell as an individual. Bankrupt.

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, Standard Paint Company, a corporation existing under the laws of the State of ———, hereby makes, constitutes and appoints Frank Arnold, of Livingston, Montana, its true and lawful

(Testimony of W. N. Russell.)

attorney, for it and in its name, to attend and vote for it at any and all meetings of creditors for the purpose [102] of electing trustees of the estate of said bankrupt, and any and all other purposes; and generally to act for it and to perform any and all acts and things whatsoever necessary or expedient to be done in said matter; and to receive for it payments of dividends or other money due, or to become due it; to make and consent for it to any and all compositions in said matter as he shall deem for its best interests; hereby granting unto our said attorney full and complete power to do and perform any and all things pertaining to said matter the same as if it were present by its proper officers.

In Witness Whereof, it has caused these presents to be signed in its corporate name by its president and its corporate seal to be hereto attached by authority of its Board of Directors, this — day of —, 19—.

STANDARD PAINT COMPANY,

By _____,

President.

Signed, sealed and delivered in presence of _____.

State of New York,

County of New York,—ss.

On this — day of March, 1916, before me appeared _____, to me personally known, who, being by me duly sworn, did say that he is the president of Standard Paint Company; that the seal

(Testimony of W. N. Russell.)

affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was executed in behalf of said corporation by authority of its Board of Directors; and the said _____ acknowledged said instrument to be the free act and deed [103] of said corporation.

Notary Public New York County, State of New York.

My commission expires —, 19—.

Q. Drawing your attention to "Exhibit No. 59," the claim of the Lindstrom Handforth Lumber Co., I will ask you the amount that was due to those people and owing at the time that you filed the petition in bankruptcy. A. \$151.35.

Q. Now, state whether that was for merchandise before or after the giving of the chattel mortgage?

A. Before.

Q. Were there any payments made to the Lindstrom Handforth people subsequent to the giving of the chattel mortgage? A. Yes, sir.

Q. Do you know how they were paid?

A. I believe through the collecting agency, or collectors.

Q. State whether or not those were the checks that were introduced in evidence this morning, through some attorneys—Fletcher and some other name.

A. I think so.

Q. How much was paid?

A. February 24, freight bill \$249.20. July 7, cash on account \$100. August 7, cash on account \$50.00.

(Testimony of W. N. Russell.)

Q. State whether or not in addition to the \$151.35 there would be \$150 that you paid in cash due and owing to those people when the chattel mortgage [104] was given? A. There was.

Mr. ARNOLD.—I introduce “Exhibit 59” in evidence.

Mr. CAMPBELL.—We make the same objection.

The COURT.—The objection will be overruled.

To which ruling of the Court, an exception was duly reserved.

Whereupon “Exhibit No. 59” was received in evidence, and is in words and figures as follows:

Tacoma, Wash., March 15, 1916.

W. N. Russell, Big Timber, Mont., In account with Lindstrom-Handforth Lumber Co.,

Oct. 8, 1914, Lumber car 41372		550	55
Feb. 24, 1915,	41372 E/B 249	20	
Jul. 7, Cash on account		100	00
Aug. 11,	“	50	00
			<hr/>
			399 20
			<hr/>
			151 35

In the District Court of the United States, for the Montana District. In the Matter of W. N. Russell Lumber Company, and W. N. Russell, Bankrupt.

No. —, Proof of Claim (Corporation). In Bankruptcy.

At —, in said District of —, on the 14th day of March, A. D. 1916, came T. J. Handforth, of Tacoma, in the County of Pierce, and State of Washington, and made oath, and says that he is the Secretary-Treasurer of the Lindstrom-Handforth Lumber

(Testimony of W. N. Russell.)

Co., a corporation, incorporated by and under the laws of the State of Washington, and carrying on business at Tacoma, in the county of Pierce, and State of Washington, and that he is duly authorized [105] to make this proof, and says that the said bankrupt, the person by (or against) whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of the said petition and still is, justly and truly indebted to said corporation in the sum of One Hundred Fifty-one and 75/100 (151.75) Dollars; that the consideration of said debt is as follows: goods, wares and merchandise, consisting principally of lumber and building materials, a bill of items of which said account is hereto annexed, that no part of said debt has been paid; that there are no set-offs or counterclaims to the same; that no judgment has ever been recovered thereon; and that said corporation has not, nor has any person by its order, or to the knowledge or belief, of said deponent, for its use, had or received any manner of security for said debt whatever.

T. J. HANDFORTH,

Treasurer of Said Corporation.

Subscribed and sworn to before me this 14th day of March, A. D. 1916.

[Seal]

JOHN D. FLETCHER,

Notary Public, in and for the State of Washington.

Residing at Tacoma, in said State.

(Testimony of W. N. Russell.)

LETTER OF ATTORNEY.

To Charles W. Campbell:

The Undersigned, Lindstrom-Handforth Lumber Co., a corporation organized and existing under the laws of the State of Washington, and having an office and place of [106] business of the city of Tacoma, county of Pierce, State of Washington, does hereby authorize you or any one of you to attend the meeting or meetings of creditors of the bankrupt aforesaid, at a Court of Bankruptcy wherever advertised or directed to be holden, on the day and at the hour appointed and notified by the Court for holding such meeting or meetings, or at which such meeting or meetings, or any adjournment or adjournments thereof may be held, and then and there from time to time, and as often as there may be occasion, for it and in its name to vote for or against any proposal or resolution that may be then submitted under the Acts of Congress relating to bankruptcy, and in the choice of trustee or trustees of the estate of said bankrupt, and for it to assent to the appointment of such trustee or trustees; with like power to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the Court, which may be held therein for any of the purposes aforesaid; also to accept any composition proposed by said bankrupt in satisfaction of his debts, and to receive payment of dividends and of money due it under any composition, and for any other purpose whatsoever in its interest, with full power of substitution and revocation.

(Testimony of W. N. Russell.)

In Witness Whereof, the said corporation has caused these presents to be executed by its Treasurer, T. J. Handforth, duly authorized thereto, the fourteenth day of March, A. D. 1916. [107]

LINDSTROM HANDFORTH LUMBER
CO.,

By T. J. HANDFORTH,
Secretary-Treasurer of Said Corporation.

Signed, sealed and delivered in the presence of

State of Washington,
County of Pierce,—ss.

On this fourteenth day of March, 1916, before me personally appeared T. J. Handforth to me known to be the Treasurer of the corporation that executed the foregoing Letter of Attorney, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, and on oath stated that he was authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Seal]

JOHN D. FLETCHER,

Notary Public in and for the State of Washington,
Residing at Tacoma, in Said County.

Q. Drawing your attention to "Exhibit No. 60," the claim of M. C. Henderson, I'll ask you who M. C. Henderson is, Mr. Russell.

(Testimony of W. N. Russell.)

A. Either the bookkeeper or member of the—I believe this man represented an oil company.

Q. Where was the oil used?

A. Very little that I know of in this case.

Q. Now, Mr. Russell, you stated yesterday that in keeping your account with the bank, your deposit account, that everything you had in the way of [108] cash you deposited in the bank—is that correct?

A. Everything; practically; the greater portion naturally went to the bank and was checked out from there.

Q. Did you keep anything in your store or office?

A. I always kept from ten to twenty-five dollars to make change with.

Q. That was the extent of it, was it?

A. Yes, sir.

Q. You also state, Mr. Russell, that you deposited in the bank not only the moneys arising from your business of retailing and selling lumber, but the proceeds of the ranch.

A. Yes, sir.

Q. That is, the property you got off the ranch?

A. Yes, sir.

Q. Is it or is it not true that you also paid out of it, this account you kept in the bank, any expenses incident to the running of the ranch that you were obligated to pay?

A. Well, I cannot say as there is anything paid out there for running the ranch, anyhow there is no amount seemingly large enough to call for a check for running the ranch. The fact that my brother was

(Testimony of W. N. Russell.)

there practically kept the ranch running.

Q. Now, then, subsequent then to June 29, 1915, and until the time you filed your petition, can you give an idea as close as you can as to what was received from the ranch and placed into the bank at different times,—not separately but in the aggregate? [109] A. Well, I couldn't give—

Q. Your best judgment.

A. —a good account of it. From hogs and horses and cows and such things as that I expect probably two hundred or two hundred and fifty dollars.

Q. Now, then, your crop on that ranch failed in the year 1913, didn't it?

A. So far as marketing anything; yes.

Q. The rest of it was used for—

A. Received some money out of it, feeding stock and feeding up some stock for our home, that we sold.

Q. Now, you paid all your labor and other current expenses through the bank, did you? A. Yes.

Q. Who did you have working for you?

A. Who did I have working for me?

Q. Who were the men working for you subsequent to the giving of this chattel mortgage?

A. Jake Vork and Jake Pleggerman.

Q. Just the two men? A. Yes, sir.

Q. What wages did they each receive?

A. One of them received \$80 and the other one worked up to that.

Q. You kept no—

A. In regard to the ranch, the money that came

(Testimony of W. N. Russell.)

from that I got just a—about January or February I sold two horses, they were used back and forth [110] between the ranch and yard there, worth about \$250 alone, outside of other—

Q. Whose horses were those? A. My own.

Q. What did you do with the money you received from those horses.

A. It went into the general pot in the lumber yard.

Q. Was the money deposited in the bank?

A. Yes, sir.

Q. Do you remember the date of it?

A. No, I do not.

Q. Do you remember particularly who it was paid out to? A. No, I do not know that.

Q. Now, then, you stated also that you received some money for teaming. A. Yes, sir.

Q. Have you any idea, approximately how much that was—I understand that you kept no account of it at all—is that correct? A. Yes, sir.

Q. It was just kept in the same way your other business was kept? A. Yes, sir.

Q. Have you any idea how much the money received from teaming amounted to?

A. No; it would be awfully hard to try to say what it would amount to.

Q. Could you give any approximate idea of what [111] it was, subsequent to the giving of the chattel mortgage?

A. During what time do you want that estimated?

Q. Subsequent to the time of the giving of the chattel mortgage until you filed the petition.

(Testimony of W. N. Russell.)

A. From the time that was given to the filing of the petition, up from July 29th until the filing of the petition?

A. That was possibly about nine months, wasn't it?

Q. No—I think I can give you the date that I filed the—the petition was filed on the 21st day of February and adjudicated on the 17th. Then between June 29, 1915, the date of the filing of the petition, and February 21, 1916.

A. Well, I imagine I would have taken in from two hundred to two hundred and fifty dollars any how, off of my team work.

Q. How many teams did you have in the lumber yard? A. I kept one team for the yard.

Q. Now, then, some of this work was done by other teams that you got from the ranch?

A. Very nearly all of it.

Q. By teams that you got from the ranch?

A. Well, I had one team for quite a while—my father's.

Q. Yes.

A. That cost me, I think, I got the use of them while I kept them—and there was a team from the ranch I had at different times. [112]

Q. And those were the teams that you hired out and got this \$200 or \$250 for? A. Yes.

Q. And you had, of course, to keep these teams and care for them.

A. I think not, that. Over and above their feed.

Q. You think that.

(Testimony of W. N. Russell.)

A. Yes, the cost of the team \$1.50 a day about, and they would bring in about \$3 a day. The team was working all day, which brings you about a dollar and a half a day net.

Q. Now, referring to these checks this morning, put in evidence this morning, all these checks were in your handwriting, signed by you, those checks put in evidence this morning?

A. All signed by me and with very few exceptions drawn up by myself.

That is all.

Examination by Mr. CAMPBELL.

Q. When did you first engage in the lumber business in Big Timber? A. 1913, I think.

Q. Were you continuously in the lumber business, then, from 1913 up to the time that petition was filed? A. Yes, sir.

Q. What bank, if any, did you do business at, with, during the time you were in the lumber business?

A. Citizens State Bank until the Scandinavian American Bank was organized; for probably 10 or 15 [113] days after it started business I began with them. Continued with them until the petition was filed.

Q. And in what month and year did you commence with the Scandianvian American Bank

A. I do not remember. It was when they—10 or 15 days after they began business—that the bank was open for business.

Q. You kept your account there? A. Yes.

(Testimony of W. N. Russell.)

Q. And did you borrow any money from the bank, at any time?

A. It seems to me that I borrowed money from them when I started with them. It seemed they took up notes from the Citizens State Bank.

Q. About what amount of money did you have borrowed from the bank just prior to June 29, 1915?

A. I think within three hundred dollars of the \$4,162—was it? or \$4,165, the amount the one note called for.

Q. Was that or any part of that money secured at all?

A. Yes, there was a former mortgage.

Q. What kind of mortgage?

A. Covering these other notes—total. Chattel.

Q. And on what was that chattel mortgage?

Mr. ARNOLD.—Just a moment, that is objected to on the ground that the chattel mortgage itself would be the best evidence. It's immaterial and irrelevant for the reason that whatever the other security was, it [114] was cared for and covered by the new note and the new security that was given under date of June 20, 1915. I've no objection to the showing that the \$4,165 was a renewal of old notes. But I object to any showing being made that it was an attempt to renew old securities because then we'll have to go into the validity of the old security if you're going to do that.

The COURT.—Objection sustained for this reason, that the testimony now is that that is the first transaction he has had with the new bank, the Scan-

(Testimony of W. N. Russell.)

dinavian American Bank. That he loaned money from this bank to take up mortgages given to another bank. And I do not think that is material.

To which ruling of the Court an exception was duly reserved.

Q. What did you do with the money which was borrowed from the Scandinavian American Bank prior to June 29, 1915?

Mr. ARNOLD.—That is objected to on the ground that it is incompetent, irrelevant and immaterial. That is absolutely outside of the question of the validity of this chattel mortgage.

The COURT.—The objection will be sustained.

To which ruling of the Court, an exception was duly reserved.

Q. How much money did you get in cash or credit [115] to your individual bank account when the loan of \$4,165 was made? A. I think about \$300.

Q. And what was the rest of the loan for?

A. Securing, or practically a renewal of an old mortgage. Notes.

Q. The \$3,865? A. Yes, sir.

Q. At the time you negotiated this loan, or rather an additional loan of \$300 to make up the \$4,165, did you tell the bank at that time, or its officers, the amount of money which you was owing to creditors on account of the lumber business?

A. No; it seemed to me that I told Mr. Moe at that time that I needed a little additional money to pay off the lumber concern which was crowding me, and that about \$300 would cover. I do not know

(Testimony of W. N. Russell.)

whether there was anything said about the rest of them.

Q. Then the bank or its officers did not know at that time that you had creditors in the—in excess of what you then did owe at the bank and that the \$300 was necessary to take up the claims outstanding against you at that time?

Mr. ARNOLD.—That is objected to on the ground that it is incompetent and immaterial, and also hearsay. Its not for Mr. Russell to state what the bank knew, he can state what he told the bank and its officers. The bank and its officers might have acquired [116] outside knowledge. He cannot say what the bank knew.

Mr. CAMPBELL.—Q. As far as you know.

Mr. ARNOLD.—That is objected to on the same ground, he is not supposed to know what the bank knew, the bank and its officers—read the question.

The question was read.

Mr. ARNOLD.—I object to it on the ground that it is incompetent, hearsay and calling for the conclusion of the witness.

The COURT.—Objectionable as calling for the conclusion of the witness; but you might—

Mr. ARNOLD.—If you'll just bear with me a moment, I will say that the bank, its officers can state what they knew, but for him to state what they did not know or did know, it is absolutely incompetent.

The COURT.—The objection is sustained on the ground of calling for a conclusion of the witness.

(Testimony of W. N. Russell.)

To which ruling of the Court an exception was duly reserved.

Q. What conversation did you have with the officers of the bank at the time you negotiated the loan for \$4,165?

A. I told him—Mr. Moe, and I don't know but I think Mr. Loving also, that I needed \$300 to pay a claim against me that was crowding me. I told them of no other but the one that was crowding and [117] that was all that I know of that was said about the claims.

Q. You did not tell them, then, that at that time that you had other obligations in excess of \$300 which was owing or due? A. No, sir.

Q. Then, so far as any representations which you made to the bank with which to procure the loan for \$4,165, the officers of the bank did not know of any other obligations which you had?

Mr. ARNOLD.—That is objected to on the ground that it calls for the conclusion of the witness. He can state what he stated to the officers of the bank, what representations he made, but he cannot state what they knew from the representations he made.

The question was read to the Court.

Mr. ARNOLD.—I object to that question as calling for the conclusion of the witness. What they knew from what he stated they must state, not he.

The COURT.—Answer the question. I think he answered it before. The objection is overruled.

To which ruling of the Court an exception was duly reserved.

(Testimony of W. N. Russell.)

A. No.

Q. What did you do with the \$300 that you received and was advanced to you at that time?

A. I paid lumber account with it [118]

Q. Have you any idea what your stock of merchandise would invoice at *at* the time the mortgage was made?

A. I think it would run about \$8,000 then for stock and real estate.

Mr. ARNOLD.—I move to strike out the answer on the ground that it is not responsive to the question.

The COURT.—Strike it out.

Q. Have you any idea what your stock of merchandise was—would invoice at *at* the time this mortgage was made? A. About \$6,000.

Q. And have you any idea what the value of your real estate was at that time? A. \$2,000.

Q. Did you make any representations to the bank or its officers at the time you procured this loan and gave the two mortgages as to the value of your real estate and of the stock of merchandise which you then had on hand

Mr. ARNOLD.—That is objected to on the ground that it calls for the conclusion of the witness; and it is indefinite with reference to the word representation. He can ask what the conversation was in regard to it, but different men may have different ideas as to what the word “misrepresentation” was.

The COURT.—The objection is overruled. [119]

(Testimony of W. N. Russell.)

To which ruling of the Court an exception was duly reserved.

A. Yes.

Q. What did you tell them as to the value of the real estate and stock of merchandise at that time?

A. I told them that it run about \$8,000.

Q. During the time that this mortgage for \$4,165 where did you keep your bank account?

A. At the Scandinavian American Bank.

Q. And was that account kept in your individual name? A. It was; yes, sir.

Q. Did you deposit in that account the proceeds from the sales made in the course of and conduct of your business? A. I did.

Q. And did you deposit also all money from collections made where credit was extended?

A. Yes, sir.

Q. Did you deposit all of the moneys which you received in the course of your business, cash or credit sales with the bank? A. Yes, sir.

Q. Did you ever deposit any money in the bank to the credit of the bank—do you understand the question?

A. No; I don't know whether you mean deposited to the credit of the bank, payment on interest or anything of the kind or what it was.

Q. No, I'll put the question in a different way. [120] Did all the moneys which you received in the course of your business from cash or credit sales, was it put in the bank to your individual account or was it in the account of the bank?

(Testimony of W. N. Russell.)

A. My individual account.

Q. Did you deposit to the credit of your individual account all the moneys which you received in the course of your business with cash or credit sales?

A. Yes, there would be very little exceptions.

Q. What were those exceptions?

A. A bill of five dollars or less, oftentimes paid out in cash from cash received, but the greater portion of this money was turned in to the bank to be checked out. Any money received, though, went back into the business.

Q. What were those small sums paid out for?

A. Well, living expenses; there was small sums paid out right along for those. And now and then a hired man probably worked a day or two days. And such things as that.

Q. Were all these sums paid out necessary incidentals of the business and of your living expenses?

A. Yes, sir.

Q. Did you at any time between the 29th of June, 1915, and the time when the petition in bankruptcy was filed, have any profits from this business in excess of your necessary living expenses and then the expenses incident to the running of your business
[121]

A. No, I didn't have enough to run the business.

Q. Then, you did not have at any time during the continuance of the lien—of this mortgage, any moneys which you could apply on your notes to the bank?

A. I did not.

Q. Did you at any time during the continuance of

(Testimony of W. N. Russell.)

this mortgage tell the cashier or any other officer of the bank that fact? A. Yes, sir.

Q. When and how many times, if you know?

A. Well, at least twice a month. They would generally ask me when I was making deposits. Of course I generally had a place for it, a bill to be paid, when the money was deposited.

Q. You made verbal representations then to the bank, or its officers, at least twice a month?

A. Yes; at least that.

Q. Weren't there several times also when you were in the bank, and oftener than twice a month, when you made verbal reports of the status of your business?

Mr. ARNOLD.—That is objected to on the ground that it's suggestive; the witness has already stated he was there at least twice a month. This question is suggestive.

The COURT.—The objection will be overruled.

To which ruling of the Court, an exception was duly reserved.

A. Yes, sir. [122]

Q. Did you tell them at any time the exact amount of money that you were owing prior to the first day of February, 1916?

A. No; I do not really believe I ever run the entire indebtedness up together myself. For myself.

Q. Then you did not know yourself how much you were in debt? A. Not to a cent.

Q. As a matter of fact, under the system of book-keeping or accounting which you had there, was it

(Testimony of W. N. Russell.)

possible for you to have made better accounts to the bank from what you did? A. No, sir.

Q. Did you ever turn any money into the bank you'd applied on your \$4,165 note? A. No, sir.

Q. Did you on any other notes after that?

A. Yes, sir.

Q. What was that?

A. As I remember it, one note secured by an automobile and another one without security that I asked for for a week or two weeks, offering a man's account, if they wanted to take it up, for a car of coal.

Q. That was to keep up your stock?

A. Yes, sir.

Q. And to keep the business going.

A. Yes, sir.

Q. Did the Scandinavian American Bank ever give you any money which was not used by you in taking [123] care of the running expenses of your business and to keep up the stock in trade?

A. No.

Q. Did the bank or any of its officers give you permission or authority at any time other than what was given to you in the mortgage, to sell goods on credit?

A. No.

Q. Did you ask them for any such permission or authority. A. I do not think I did.

Q. None of the officers of the bank even ever gave you permission to extend credit for more than 30 days? A. No; not that I know of.

Q. Did you ever get any permission from the bank or any of its officers to buy materials, supplies and

(Testimony of W. N. Russell.)

merchandise from wholesalers and jobbers, on credit?

A. No; I never asked them whether I could or whether I could not.

Q. You never conferred with them about that end of the business at all? A. No, sir.

Q. Now, you stated on direct examination that some of the money which you received in the course of your business and which was deposited to your individual account in the Scandinavian American Bank, came from team work and from your ranch. Now, is there any other source from which you derived [124] moneys during the pendency of this loan—this mortgage?

A. No, I do not think there was.

Q. You were conducting a lumber business in Springdale, were you not? A. Yes, sir.

Q. Didn't you get any money from—any revenue from that business?

A. Yes. Yes, I considered that lumber business the same as my lumber business in Big Timber.

Q. What did you do with the moneys that were derived from the sales at Springdale?

A. They went into my business at Big Timber, along with the Big Timber money. I also sold lumber that I collected freight money on, to Lake Basin. Some of the team work that I did brought in money that way, hauling lumber into the Lake Basin County.

Q. Did you derive any profits from those sales other than from the team work? A. Yes, sir.

(Testimony of W. N. Russell.)

Q. And where did that money go?

A. That money went right into the bank. Also in those instances, the money derived from my teams went into the bank the same as the lumber money.

Q. What do you mean when you say "Went into the bank?"

A. I put it into my credit there.

Q. Your individual account?

A. Yes, sir. [125]

Q. Who was the beneficiary in the life insurance policy which you were carrying? A. My wife.

Q. That policy was not also made payable to your estate?

Mr. ARNOLD.—That is objected to on the ground that it is incompetent, immaterial. What has his life insurance policy got to do with the validity of the mortgage?

Mr. CAMPBELL.—It was brought out on direct examination it had been payable to the estate it would have went to the benefit of the trustee and creditors.

The COURT.—Answer the question. Overruled.

To which ruling of the Court, an exception was duly reserved.

A. It was not.

Q. Just your wife alone? A. Yes, sir.

Q. Now, in regard to "Exhibit No. 18," which was a check for \$25, made August 12, and given to Joe Meister, you testified that that was in payment or at least part payment, for the mare. Was that mare used by you in your lumber business?

(Testimony of W. N. Russell.)

A. She was. She was used in the same place that one of the horses I have to-day was used. After buying the mare I exchanged twice—once again and got a horse that matched the one that I was already driving, making a more valuable team.

Q. What was that team used for? [126]

A. For drayage of lumber and coal almost altogether, to and from the yard.

Q. Now, in regard to Exhibit No. 21, which was a check for \$55, given October 5, to H. Utermohle, you testified that that was a part payment on lots. What lots was that check given in payment for?

A. The two that I kept my rough lumber, shingles and lath on. Also had my horse barn on those two lots.

Q. Were those lots necessary to the carrying on of your business?

A. Yes. There was not enough room for the business on two lots.

Q. Now, "Exhibit 24" was also a check to H. Utermohle and was a balance due on lots, that was the same lots?

A. Yes, sir. That finished up for the lots.

Q. These are lots 11 and 12 in—

A. In block 16.

Q. Now, in regard to "Exhibit No. 25," which was a check for \$52.49, given to the Scandinavian American Bank, you testified that it was part payment of a note given for an automobile. That automobile used by you in conducting your lumber and coal business? A. Yes, sir; it was.

(Testimony of W. N. Russell.)

Q. In regard to "Exhibit No. 31," check—which was a check for \$15 given to the Oliver Typewriter concern. Was that typewriter used in the course of your business? [127] A. It was.

Q. And several of your creditors which you were owing for materials and supplies purchased by you, you gave notes, did you not? A. I did.

Q. Did you tell the bank or any of the officers of the bank that you were giving those notes?

A. No.

Q. You testified on direct examination that you estimated that you took in \$250 from the ranch. That estimate is not accurate, is it?

A. Its not, no. Its only a guess. I think if anything I took in more money.

Q. And the \$250 which was taken in for team work was also a guess, was it not? A. Yes; it was.

Q. Was there ever at any time during the business that you carried on there in Big Timber and particularly from about the 29th of June until your petition was filed, any agreement or conversation to the effect that you would give a mortgage on your stock of goods and your real estate for the purpose of beating other creditors or making the Scandinavian American Bank a preferred creditor to the rest?

Mr. ARNOLD.—Just a moment—that is objected to on the ground that it calls for the conclusion of the witness, and on the ground that its a question for the Court from the facts in the case as to whether the

(Testimony of W. N. Russell.)

creditors [128] were hindered, delayed or defrauded.

The COURT.—If this is for the purpose of laying the foundation for an impeachment, it would hardly be proper cross-examination. The objection will be overruled, answer the question.

Mr. ARNOLD.—I object to it further, if the Court please, on the ground that it is not proper cross-examination.

The question was read to the Court.

Mr. ARNOLD.—That is objected to on the ground that it is incompetent and immaterial in so far as it refers to a time subsequent to the 29th day of June, when this mortgage was given, and for the further reason that it is incompetent and immaterial because the statute does not in any shape or manner prohibit or refer to a man beating his creditors, and there is nothing in the statute about beating the creditors; and for the further reason that there is not anything in the statute that prevents a man giving one creditor a preference over another. You got a right to prefer one creditor over another and that is what was done in this case, a preference. The provision of the statute is against hindering, delaying or defrauding the creditors. The question does not come to that issue at all. [129]

Mr. CAMPBELL.—The objectors here have introduced in evidence a whole raft of checks and claims and—

The COURT.—Well, in the first place if he answered that question in the affirmative, that there

(Testimony of W. N. Russell.)

was such an agreement, it would be detrimental to you more than to the other. The objection will be overruled.

To which ruling of the Court, an exception was duly reserved.

A. No, sir; there was no such agreement made.

Q. Was there any conversation about beating them? A. No, sir.

That is all.

Redirect Examination.

(By Mr. ARNOLD.)

Q. Now, Mr. Russell, what did you understand by Mr. Campbell's question as to whether you made any agreement or had any conversation whereby you were to beat, as Mr. Campbell phrases it, your creditors. What did you understand him to mean by that when you answered the question "No"? What did you understand by the question in which Mr. Campbell uses the word "beat"?

A. I understood that he wanted to know if that agreement or mortgage was drawn up to beat somebody.

Q. What do you mean by "beat"? What did you understand him to mean?

A. Why, to do somebody else out of money. To [130] take money that belonged to somebody else.

Q. That's what you understood him to mean?

A. Yes, sir.

Q. That mortgage was drawn up to secure the Scandinavian American Bank, wasn't it?

A. To secure them?

(Testimony of W. N. Russell.)

Q. Yes.

A. Yes; for money that I had got from them.

Q. In the past? A. Yes, sir.

Q. Insofar as it was drawn up then, it was a preference over other creditors, wasn't it—what?

Mr. MILLER.—That is objected to as not proper re-direct examination, and calling for a conclusion of the witness, a conclusion of law.

The COURT.—The objection will be sustained.

The last question was read.

Mr. MILLER.—The question is asking for a conclusion. What is a preference is a question of law, absolutely, in bankruptcy courts.

The COURT.—There is no other way of arguing that.

Mr. ARNOLD.—Your objection to the question then is that it calls for a conclusion of law?

Mr. MILLER.—Well, that's right.

The COURT.—The objection will be sustained as calling for the conclusion of the witness.

To which ruling of the Court, an exception was duly reserved.

Q. Now, [131] what did you understand Mr. Campbell to mean then when he asked you about whether you intended to give the Scandinavian American Bank a preference?

A. Why, he meant that—did I mean to give them a preference over the other creditors of course.

Q. Well, that was understood when you executed that mortgage to the Scandinavian American Bank

(Testimony of W. N. Russell.)

that you'd prefer them to the other creditors, wasn't it? A. Well, no.

Q. Wasn't that the purpose of giving the mortgage to them?

A. The idea of giving them the mortgage was to get the money.

Q. Well, but you had the money then—didn't you, Mr. Russell?

A. The idea was to keep it, to keep using it. Supposing I'd been unable to get the money, the creditors would have thrown the business out. Had I been able to continue running, no creditor or no man would have lost a cent.

Q. But as a matter of fact the giving of that mortgage gave the Scandinavian American Bank security that other creditors did not have, didn't it?

A. Well, I don't know what it gave them but it gave me the means to keep going. That is what I was paying attention to.

Q. But it gave them security that others did not have, didn't it? [132] A. Well—

Q. (Interrupting.) Well, but you can answer the question yes or no. Didn't it give them security that the other creditors did not have?

A. Well, that would naturally be up to them—

Q. (Interrupting.) You can say yes or no to that question. You hadn't secured other creditors, had you? A. Yes.

Q. What others?

A. Those that have the notes—had the mortgages.

Q. What other creditors had mortgages?

(Testimony of W. N. Russell.)

A. Why, chiefly the firm that had the crop mortgage, the Eureka people.

Q. That was the only one?

A. Yes. That is the only one that had a mortgage.

Q. Now, at the time you gave this mortgage, Mr. Russell, you stated there was no agreement to beat your other creditors—that is correct, isn't it?

A. Yes.

Q. But the understanding that you had with Mr. Moe was that you needn't pay any attention to the provision of the mortgage and you could go on doing business as you had in the past, wasn't that it?

A. No, sir.

Q. What did Mr. Moe say to you with reference to the provisions of that chattel mortgage, rendering an account each month? [133]

A. He said that they would call for them as they wanted them, which they did, every few days when I was turning in my money.

Q. He told you you need not make a monthly statement? A. No.

Q. Didn't Mr. Moe tell you you needn't make an accounting each month? A. No.

Q. They would call for it when they wanted it?

A. He said they would call for it when they wanted it.

Q. As a matter of fact you never did make any monthly accounting, did you?

A. I made it weekly.

Q. Those accounts weren't written accountings—

(Testimony of W. N. Russell.)

were they? A. No, not written.

Q. They were not based on any statement that you drew from your books of any actual summing up of your assets and liabilities?

A. Why, not that I took two or three days to run up for them a statement of that account, no; but I knew all the time close enough to suit any man where I was at.

Q. And when you made him these statements you did not tender to him any balance of cash or money that you might have had on hand at the time—did you? A. I never did have that. [134]

Q. You had a balance on hand from time to time, didn't you?

A. There might have been a balance, but it did not lay there and go to waste at all, there was always 10 or 15 places to put that money.

Q. And it was drawn out, was it not, Mr. Russell, a great part of it, or a considerable part of it, to pay creditors that consisted at the time the chattel mortgage was given?

A. Why, yes; it was drawn at the time to pay all the bills necessary to be paid to keep the business running.

Q. That was the idea with you and Mr. Moe, was it not? To keep the business running and pacify the creditors as easily as possible?

A. My idea was certainly to keep it running.

Q. Wasn't that Mr. Moe's—

Mr. MOE.—(Interrupting.) I think I—

Mr. ARNOLD.—You— When I want to ask you

(Testimony of W. N. Russell.)

something I'll put you on the stand and—

The WITNESS.—You'll have to ask Mr. Moe for that.

Mr. MILLER.—We object to that as—

Mr. ARNOLD.—I ask that Mr. Moe be instructed not to interpolate or anything of that kind, unless he's asked something.

Mr. MILLER.—Well, we'll object to that question for the reason that it is asking for a conclusion of the witness as to what Mr. Moe thought or what he didn't think or needn't do. [135]

The COURT.—Sustained.

Mr. ARNOLD.—And I further ask that one counsel at a time conduct this examination on a side.

The COURT.—I suppose that would be correct.

Mr. MILLER.—There is no rule to—

The COURT.—Only the court rule.

Mr. ARNOLD.—That's a rule that one counsel on a side cross-examine or examine at a time; not two.

The COURT.—Well, gentlemen, let's make such a rule that counsel conduct his cross-examination one at a time.

Mr. ARNOLD.—Q. Now, then, Mr. Russell, you stated that you never had any money that you could apply on your note to the bank? A. Yes, sir.

Q. Did Mr. Moe ever ask you what you were doing with the money taken in every day and the profits of your business? A. Yes, sir.

Q. Where did you tell him they were going to?

A. I told him it was taking all that was coming in to keep up my stock and keep going, which it was

(Testimony of W. N. Russell.)

doing. I was holding out too much credit which I found out afterwards was impossible to do, and he told me so at the time.

Q. When did he tell you that?

A. Probably once or twice every month when he thought I should be advised to back off on giving [136] so much credit a little bit.

Q. Then you discussed with Mr. Moe the question of your giving too much credit—did you?

A. I did not discuss it with him, I asked him, told him the parties to whom I was giving credit in the lumber business. I didn't ask him if he should give so and so credit. In the lumber business if we're going to give a man credit we tell him "Yes" and go ahead and load him up and get away with it.

Q. He told you at least two or three times a month you were giving too much and too long a credit?

A. No, that's not what he told me.

Q. What did he tell you?

A. I never told him the length of time I was giving the credit. As a matter of fact I made it a point to never give a man over 30 days, but as I found out 30 days meant anywhere from 30 days to never.

Q. So you discussed that phase of it with Mr. Moe, did you?

A. Well, I did not discuss it with him as to how long it was, these accounts coming in, etc., and so on; but I did tell him when he asked who I was giving credit to, those I had in my mind I told him about.

Q. And you told him when you spoke of these ac-

(Testimony of W. N. Russell.)

counts, what credit had been given and how old they were and all that kind of thing—you discussed [137] with him—did you?

A. I can't say I ever told him how old any of them were.

Q. Did he ever inquire?

A. As to that I don't know.

Q. Did he ask you, Mr. Russell, why these accounts weren't collected and all that kind of thing?

A. No, I imagine that he knew as well as myself why they were not collected in.

Q. Now, he never came down to look at any of the books or files of yours—did he?

A. I don't know whether he looked over them; I wasn't in the office every minute of the day.

Q. Well, when you were present.

A. Not while I was there, no.

Q. He never made you bring your books up to him so he could see,—did he?

A. No, he did not. I think I give him sufficient information, didn't think it necessary to see them; at—or at else he had seen them.

Q. Now, Mr. Russell, you stated that at the time you gave this chattel mortgage your stock of merchandise inventoried to your best judgment about \$6,000? A. Yes, I think so.

Q. Well, during the time this chattel mortgage was in existence could you estimate how much merchandise you bought and took into the business, between

(Testimony of W. N. Russell.)

the giving of the chattel mortgage and the date you filed your petition? [138]

A. That \$2,500 now—put \$2,800 I believe in lumber.

Q. Was that independent of what you got from your father? A. No, sir.

Q. Including what you got from your father?

A. That was in lumber and building material, but the coal end of it I can't estimate.

Q. The coal end of it went out as fast as it came in?

A. Practically; yes.

Q. And that was never on hand for any length of time? A. No. No, it wasn't.

Q. You ordered a carload of coal as fast as you wanted it, and it was gone within ten or fifteen days?

A. With the exception of \$150 worth or possibly \$200 worth of coal generally carried in the shed.

Q. Yes. Then included in this stock of merchandise of \$6,000 there would be only at that time about \$200 worth of coal in the shed? A. Yes.

Q. And that was practically all the coal you ever carried on hand at all?

A. Yes; as a general thing.

Q. Now, then, for the purpose of just showing the total amount of merchandise that you did buy subsequent to the giving of the mortgage and prior [139] to the bankruptcy, there's \$565 to the Pacific States Lumber Company—wasn't there?

A. Yes.

Q. \$1,100 worth to Blondel-Donovan—wasn't

(Testimony of W. N. Russell.)

there? A. This Pacific—

Q. I'm talking now of the gross amount.

A. This is after the mortgage was given?

Q. Yes. A. Yes.

Q. \$1,100 to Blondel-Donovan Company?

A. With the two, I think.

Q. \$1,100 including the freight was the Blodel-Donovan bill—wasn't it? \$1,100 would be the value of the lumber at Big Timber, wouldn't it?

A. Yes, sir.

Q. \$1,100 and \$565 would be approximately \$1,650, wouldn't it, Mr. Russell? A. Yes, sir.

Q. And \$131 to the Dakota Plaster Company?

Mr. CAMPBELL.—If the Court please, I'd like to introduce an objection at this time; I'd like to object to that on the ground that it is not proper re-direct examination.

Mr. ARNOLD.—If your Honor please, Mr. Campbell brought out the value of this stock of merchandise at the time the mortgage was given. He never went into it at all. Now, I want to show how Mr. Russell makes this up and test his ability to estimate.

Mr. CAMPBELL.—If the Court please, I never [140] brought out anything about how much was purchased after the mortgage was given. All I brought out was the fact that this stock of goods on hand was so much at the time the mortgage was given for the purpose of showing good faith on the part of the bank. Nothing was said about the amount of merchandise purchased after the mortgage was given.

(Testimony of W. N. Russell.)

The COURT.—No, it was—that was gone into. The question that Mr. Campbell asked was before the mortgage. It is objectionable as having already been gone over. Those facts are all in evidence and show they were purchased subsequent to the giving of the mortgage.

Mr. ARNOLD.—I want to find out the gross amount and then find out the value of the property mortgaged at the time of the filing of the petition.

The COURT.—The objection will be sustained.

To which ruling of the Court, an exception was duly reserved.

Q. Now, then, Mr. Russell, at the time you filed your petition, have you any idea of the value of the stock of merchandise?

A. No, sir; I don't know what it did run.

Q. Could you give any idea of it at all?

A. Well, no; I'll not give any idea because that's too long a guess to make, what a man is [141] selling—buying and selling in that time.

Q. I'm not asking you what you bought and sold, I'm asking you the value to the best of your judgment of the stock of merchandise at the time that you filed your petition in bankruptcy.

A. I could not estimate on that any more than I could—tell the number of bricks in that building over there.

Q. You estimated it at the time you gave the chattel mortgage—didn't you?

A. Estimate it? Yes, three days estimating it.

(Testimony of W. N. Russell.)

Q. Did you take an inventory at the time you gave the chattel mortgage?

A. You might call it an inventory. I spent three days to find out what I had. I did not take three or four men to run around behind me, as a man would to have it down to a dollar—to a cent.

Q. About the month of January, you also took an inventory—didn't you?

A. No—Bert went around and I started with him and took a part of that inventory, but my men took a part of it, and we were hauling at the time, we couldn't give him all of our time there. Bert probably put in a day, or a day and a half that we wasn't with him. And the other was about, I think he probably spent two and a half or three days then. So when it takes that much time to count up these lumber bills, etc., a man would have a pretty nice time of guessing anywheres near what he has got. [142]

Q. Well, Mr. Russell, notwithstanding the fact—would you estimate—you've been in the lumber business for how many years?

A. Well, I was born in the woods, and I'm in them yet, I guess—here in Livingston.

The COURT.—I presume that's not responsive.

Q. No. You've been engaged in the business how long, Mr. Russell?

A. Well, since I've been old enough to be able to figure.

Q. And you're how old now? A. I am 26.

Q. Well, would you estimate your stock of mer-

(Testimony of W. N. Russell.)

chandise at the time you filed your petition in bankruptcy was larger or less than it was at the time you gave the chattel mortgage?

A. I naturally believe that it was less.

Q. Notwithstanding the fact that you had made purchases to keep up the stock of lumber during the six or seven months while the mortgage was in existence?

A. Yes, sir; I made these purchases to keep up the stock as near as possible.

Q. Did Mr. Moe ever ask you whether you were keeping up the stock of merchandise?

Mr. CAMPBELL.—Just a moment—I object to that as incompetent, irrelevant and immaterial.

The COURT.—The objection will be overruled.

To which ruling of the Court, an exception was duly reserved. [143]

A. Yes; and he also looked it over once in a while.

Q. Do you know how many times he asked you?

A. Well, I think he mentioned it probably twice a month when he asked me about the whole thing in general; yes.

Q. Did he ask you who you were purchasing merchandise from?

A. No, I don't believe he made that a point of his business who I bought from.

Q. Did he ask you how you were buying it or what terms you were buying it on?

A. No, sir; he did not.

Q. Did he ask you whether you were buying—pay-

(Testimony of W. N. Russell.)

ing for it in cash or its equivalent?

A. No; he did not.

Q. Didn't go into that at all. Did you tell him?

A. No, sir.

Q. When you mortgaged this real estate and merchandise to the Scandinavian American Bank you estimated it and Mr. Moe understood you to estimate it, as you say, to be approximately valued at \$8,000. A. Yes, sir.

Q. Did Mr. Moe give any reason or did he discuss with you why he wanted so much security to take care of a little loan like \$4,165? A. No, sir.

Q. The real estate had been mortgaged to the bank, hadn't it? Before? [144]

A. I don't believe it had.

Q. What was the purpose of giving the mortgage at the time then, Mr. Russell? Why was the additional two thousand dollars of real estate put into the deed—was the bank crowding you?

A. No, but they didn't figure the old mortgage was sufficient—they figured that the security was sufficient and it was due and that a few small notes—that that mortgage was due, of course they're like all the rest of the banks that I ever found, they want all the security they can get.

Q. Now, you also stated on examination by Mr. Campbell that you wanted \$300 to pay a claim that was crowding you at that time—is that a fact?

A. Yes, sir.

A. Well, didn't he ask you at that time whether

(Testimony of W. N. Russell.)

you owed anything else?

A. No, he said, "Who is crowding you?"

Q. He asked you, "Who is crowding you?"

A. Yes.

Q. What did you tell him?

A. I told him that Selters had something against me—an account against me.

Q. Did you say anything to him at that time about your father—you owing your father anything?

A. No.

Q. Do you know whether he knew that you owed your father anything?

A. Why, I don't know that; I don't think that he [145] knew anything about father's business then, because father hadn't been coming down and paying much attention to the business up to that time. I don't believe that father had met him at that time yet. I'm sure that he hadn't, because I remember of introducing him later when he came.

Q. When your father came with your notes?

A. Yes, it was later. Yes—with my notes.

Q. This is a matter I probably should have gone into on direct examination, and I'd like very much to go into this, it will not take but a very few minutes. You speak of some notes that your father had of yours. A. Yes.

Q. Do you remember the amount of those notes?

A. There were either four or five notes and I think secured \$3,100 or \$3,200—I'm not sure about that.

Q. When you speak about them securing \$3,100 or

(Testimony of W. N. Russell.)

\$3,200, you mean that the note represented that?

A. Represented that; yes.

Q. There was no security given?

A. Given principally in his and my estate and to be straightened out with the estate and generally known that way. He represented to Mr. Moe that that is what the notes was given for.

Q. Do you know when this was, about what time that was that these notes were made known to Mr. Moe?

A. No; it was not very long though. It wasn't very [146] long before my petition was filed, in bankruptcy.

Q. How long about?

A. I should judge about two or three months.

Q. Now, as a matter of fact, Mr. Russell, weren't these notes that you gave to your father placed with the Scandinavian American Bank as collateral security for a loan that your father made from the bank of \$200?

A. I think—Yes, I had one there a little while.

Q. Now, then, that note of \$200 representing money that your father borrowed from the bank—state whether or not that was paid by you to the Scandinavian American Bank—the \$200.

A. Whether it was paid to me?

Q. Paid by you to the bank—whether you paid your father's note off at the bank. A. Yes.

Q. Do you know when? A. No, I don't know.

Q. Who did you pay it to, Mr. Russell?

(Testimony of W. N. Russell.)

A. To the bank.

Q. Well, but who at the bank, who was the officer to whom you made payment, if you know?

A. I could not say.

Q. Were you with your father when he borrowed this money from the bank, this \$200?

A. No. But it was about that time, within a day or so father met Mr. Moe.

Q. You didn't know—you didn't assist your father in making the loan of \$200, did you? [147]

A. Of making the loan?

Q. From the bank. A. No.

Q. Was it understood between him and yourself that you were to pay the loan off, this \$200?

A. No, I can't say it was. I don't think I said anything to him about it.

Q. But you did as a matter of fact pay the account?

A. I know I did agree with my father to pay that off, providing I could get some more stock that I needed pretty bad for the yard.

Q. And you did pay this off at the bank?

A. Yes; because I got more credit from the—

Q. Did you pay anybody—any of your creditors anything except what you paid through the Scandinavian American Bank after June 29, 1915, except small accounts, few dollars, something like that?

A. After June 29, 1915?

Q. Yes, after the giving of the chattel mortgage.

A. Yes, there was a little business transacted that was not finished up right there in town.

(Testimony of W. N. Russell.)

Q. What was that, Mr. Russell?

A. It was on a little indebtedness to a party, unpaid—I think it was brought out here during the first meeting, one of them.

Q. This note that was paid off to your father's account at the bank was paid out of moneys in the bank was it, as you paid them?

A. As I remember it, I think it was; yes. [148]

Testimony of E. J. Moe, for Petitioner.

E. J. MOE, a witness duly called and sworn, upon examination by Frank Arnold, Esq., testified as follows:

Q. Mr. Moe, you're the same E. J. Moe are you, who testified on behalf of the Scandinavian American Bank at the commencement of these proceedings?

A. I am.

Q. Was Mr. Russell ever a stockholder in the Scandinavian American Bank?

A. Yes, sir; he was.

Q. Do you know whether or not he is a stockholder at the present time? A. No, I do not.

Q. When did he cease to be a stockholder, if you know. A. I could not say as to that.

Q. Before or after the giving of this chattel mortgage?

A. Well, I could not say as to that, I don't remember when he ceased to be one.

Q. Do you know how many shares of stock he had?

A. As I remember it, he had two.

Q. Now, Mr. Moe, you have with you the ledger

(Testimony of E. J. Moe.)

account of W. L. Russell with the Scandinavian American Bank, have you?

A. Mr. Campbell has it, I believe.

Q. Now, Mr. Campbell, will you produce that ledger account please?

(Produced by Mr. Campbell and handed to witness.) [149]

Q. That account covers what date, what period of time?

A. From May 7, 1915, to October 7, 1916.

Q. Now, starting with June 29, 1915, the date of the chattel mortgage, what is your system, Mr. Moe, what is the system of the Scandinavian American Bank in keeping that account?

A. Individual ledger accounts?

Q. Yes; what method.

A. Well, here's the date, the year and month and day, and checks in detail, and total checks. Whatever deposits happen to come in on the same day, add the deposits to the former balance, subtract the checks for that date and carry out the new balance.

Q. Now, under the heading, we'll take for instance June 29, on the first day under this—on the morning of June 29, what was the balance to the credit of W. N. Russell?

A. \$209.09, morning of June 29.

Q. That would appear under the column headed balance,—would it? A. Yes, sir.

Q. Now, then, the business transactions of June 29, would appear in what manner?

(Testimony of E. J. Moe.)

A. They would appear on the books for June 29.

Q. Now, under the column headed deposits, there is an item under date of June 29, of \$300 and another item of deposit on that date. A. \$200.16. [150]

Q. Now, then, those were the two items of deposit on that date, were they?

A. Two items on deposit on June 29, 1915.

Q. Now, then, under the heading of total checks there is an item of \$559.60; what does that mean?

A. That is the total of three checks paid by the bank on that date.

Q. And those checks are made up of items under the heading of checks in detail? A. Yes, sir.

Q. And constituting the three checks there is one amounting to \$262.00, one amounting to \$251.25, and one amounting to \$46.35—is that correct?

A. You mean 262?

Q. \$262, \$251.25 and \$46.35. A. Yes, sir.

Q. That makes up the total checks with which the account would be charged, or \$559.60?

A. Yes, sir.

Q. Then, under your system, that \$559.60 would be deducted from the balance on hand that morning, of \$209.09, and the two deposits, one \$300 and the other of \$200.16, made on that date? A. Yes, sir.

Q. That would leave a balance close of business on the 29th day of June, 1915, of what?

A. \$149.65.

Q. Now, Mr. Moe, that was to the credit of W. N. Russell, that balance? A. Yes, sir. [151]

Q. Now, Mr. Moe, on the 30th day of June, at the

(Testimony of E. J. Moe.)

close of business, what was the balance to the credit of Mr. Russell?

A. At the close of business on—

Q. On the 30th day of June.

A. 1915—it was \$266.74.

Q. At the close of business on the 30th of June?

A. Yes, sir.

Q. What was the balance to the credit of W. N. Russell at the close of business July 1, 1915?

A. \$265.74.

Q. At the close of business July 2, 1915?

A. \$400.90.

Q. At the close of business July 3, 1915?

A. \$446.91.

Q. At the close of business July 4, 1915?

A. There is no balance for July 4th.

Q. At the close of business for July 6, 1915?

A. \$142,61.

Q. At the close of business July 7th?

A. \$117.39.

Q. At the close of business July 8th?

A. \$52.39.

Q. At the close of business July 9, 1915?

A. There is no July 9th.

Q. At the close of business July 10, 1915?

A. \$25.39.

Q. Now, turning to the month of August, 1915, will you tell me from that account the balance to the credit of W. N. Russell, August 1, 1915? [152]

A. The first balance in August showed on August the second.

(Testimony of E. J. Moe.)

Q. And that was what? A. \$92.87.

Q. What was the balance to his credit on August 3, 1915? A. \$146.45.

Q. August 3, 1915?

A. Wrote in two balances there, one of \$146.45 and the other of \$157.11. That is probably the correct one.

Q. August 4, 1915? A. \$203.59.

Q. August 5, 1915? A. \$242.02.

Q. August 6, 1915? A. \$104.12.

Q. August 9, 1915? A. \$157.14.

Q. Were there any balances on August 7th and 8th of 1915?

A. No. Possibly the account did not change on those two days.

Q. August 11, 1915? A. \$202.51.

Q. Referring now to the month of September, 1915, on the first day of September, 1915, what balance, if any, was there to the credit of W. N. Russell?

A. \$141.45. [153]

Q. On September 2, 1915? A. \$179.95.

Q. September 3, 1915?

A. No balance; the same balance.

Q. On September 4? A. \$53.15.

Q. On September 7th? A. \$13.86.

Q. The balance on the 5th and 6th day of September, then, would be the same? A. No change.

Q. Now, September 9th? A. \$6.36.

Q. Now, referring to October, 1915. What was the balance to the credit of W. N. Russell on the first day of October, 1915?

(Testimony of E. J. Moe.)

A. The balance is the same as on September 29th.

Q. Now, on October 2, what was the balance?

A. \$241.45.

Q. October 4, 1915? A. \$181.20.

Q. October 5, 1915? A. \$304.16.

Q. October 6, 1916? A. \$346.52.

Q. October 8, 1915? A. \$126.51.

Q. October 7, 1915? A. \$398.16.

Q. October 9, 1915? [154] A. \$128.58.

Q. October 11, 1915? A. \$170.60.

Q. Now, during the month of November, 1915, what was the balance to the credit of W. N. Russell on the first day of November, 1915? A. 83.94.

Q. November 2, 1915? A. \$2.79.

Q. November 3, 1915? A. \$53.44.

Q. November 4, 1915? A. \$198.97.

Q. November 5, 1915? A. \$114.30.

Q. November 6, 1915? A. \$312.52.

Q. November 8th, 1915? A. \$65.84.

Q. November 9, 1915? A. \$2.43.

Q. November 11, 1915?

A. \$56.90. Correct that to \$56.09.

Q. The month of December, 1915. December 1, '15? A. An overdraft of \$78.35.

Q. This overdraft of \$78.35, state whether or not, Mr. Moe, that was money loaned to Mr. Russell or which he was permitted to overdraw in addition to the notes which are already in evidence secured by \$250.00 additional credit under the chattel [155] mortgage?

A. No, sir; it was not loaned to him, or was not

(Testimony of E. J. Moe.)

given to him as additional credit.

Q. Well, state whether or not the bank honored his checks so that overdraft appeared on the books on that day?

A. They must have honored the check or it would not appear.

Q. And those checks were outside or exclusive of the additional credit that is represented by the notes under the chattel mortgage?

A. Well, it was not given by the bank as a credit.

Q. Now, then, Mr. Moe, what was the balance—that \$78.35 was then a debit balance on the morning of December 1st?

A. At the close of business on the first.

Q. Now, what was the balance on December 2?

A. \$43.40.

Q. That was what balance?

A. That was a balance at the close of business December 2, 1915.

Q. Was it a credit or debit balance?

A. It was a credit balance.

Q. Now, state whether or not that debit balance of \$78 and some odd cents at the close of business on the first was wiped out by deposits made on the 2d day of December, 1915?

A. It may possibly have been wiped out on the first day of December.

Q. After the close of business? [156]

A. Yes, after the books were closed.

Q. But it would be wiped out by deposits made according to that account. A. Yes, sir.

(Testimony of E. J. Moe.)

Q. What was the balance to the credit of W. N. Russell the 3d of December? A. \$69.79.

Q. On the 4th of December? A. \$191.83.

Q. On the 5th of December?

A. Same balance.

Q. On the 6th of December? A. \$184.17.

Q. On the 7th of December? A. \$406.73.

Q. On the 8th of December? A. \$393.89.

Q. On the 9th of December? A. \$247.17.

Q. On the 10th of December? A. \$381. 35.

Q. Referring now to the first day of January, in the year 1916.

A. The balance run the same from December 31 until the 5th of January.

Q. Until the 5th of January? A. Yes, sir.

Q. Now, on the 6th of January, 1916, what was the balance to the credit of Mr. Russell, if you know?

[157] A. \$39.29.

Q. The 7th? A. \$99.79.

Q. The 8th? A. \$64.59.

Q. And the 10th of December? A. \$95.71.

Q. Referring now to the first of February, 1916.

A. It was the same as his balance on January 26, \$1.11.

Q. And state what the balance was from the first of February, 1916, to February 10th, to his credit.

A. The first day of February to February—up to February 11, 1916, \$1.11

Q. To his credit? A. Yes.

Q. Now, will you refer to your account during the period I have stated and tell whether he on any other

(Testimony of E. J. Moe.)

occasion—on any day the account of W. N. Russell was overdrawn except the item of \$78.35 already gone into.

A. There was an overdraft on January 14, 1916.

Q. To what amount? A. \$4.61.

Q. Any other day?

A. On September 28, 1915.

Q. It was overdrawn to what amount?

A. \$2.05.

Q. Any other overdraft? A. No, sir. [158]

Q. Now, then, Mr. Russell, during the period of time between June 29, 1915, and February 11, 1916, with the exception of the three overdrafts that you have referred to, will you state from your account, or rather the account of the bank with W. N. Russell whether there was or whether there was not at all times a balance at the close of each day's business to the credit of W. N. Russell?

A. There was with the exception of the time he was overdrawn.

Q. Those three items you've mentioned?

A. Yes, sir.

Q. And these overdrafts would be wiped out by deposits at the close of the business that day or the succeeding day? A. Yes, sir.

Q. Your method of keeping that account to which we referred during the beginning of your examination, making deposits to whatever columns the different items should go is the method that the account was kept during the entire time to which we've referred, was it?

(Testimony of E. J. Moe.)

A. The check account was; yes, sir.

Q. Now, that account was kept with W. N. Russell subsequent to June 29, 1915, and up to the date I've mentioned in the same manner that it was kept prior to the giving of this chattel mortgage and during the time that he was doing business with the bank?

A. The same system of bookkeeping? [159]

Q. Yes. A. Yes, sir.

Q. And there was no change in his account, it was kept in the same heading and the account followed on after June 29, 1915, just the same as it had been kept as to method and system, as before?

A. It was kept in the same manner, yes, sir.

Q. And under the same heading?

A. W. N. Russell.

Q. Yes. Now, these balances that were to the credit of Mr. Russell on the specific dates mentioned and the balances that were to his credit at all times from June 29, 1915, to February 11, 1915, state whether or not they were checked out by Mr. Russell and used as he saw fit in his business. A. They were.

Q. None of the items of daily balances to the credit of Mr. Russell were ever taken out of his account and applied on this mortgage indebtedness, was it?

A. No, sir. There was—he made a payment on one of the small notes, but whether he made that by a check or whether he made it in cash I cannot say at this time.

Q. You're referring now to the credit of \$50 on the \$170 note?

A. On one of the different notes; yes.

(Testimony of E. J. Moe.)

Q. Made in January of 1916? [160]

A. I don't remember when it was made. I refer to one of the notes given outside of the mortgage notes.

Q. When was this account closed, Mr. Moe?

A. Its not closed yet.

Q. Is there a balance now to his credit?

A. Yes, sir.

Q. How much? A. \$10.75.

Q. I will draw your attention, Mr. Moe, to Exhibit No. 37, a check for 55 cents, under date of February 23, 1916, who is that payable to?

A. Its payable to the bank.

Q. What bank *what* that be?

A. Why, I suppose the Scandinavian American Bank.

Q. Do you know what that item of 55 cents is for?

A. There's a footnote on there, interest on note for \$196.00.

Q. Are you able to shed any light on that \$196 note?

A. No, sir.

Q. That check is not signed by Mr. Russell, is it?

A. No, sir.

Q. How is that done?

A. Signed "Charge W. N. Russell."

Q. And that would be done by whom?

A. It was done by one of the officers of bank.

Q. And Mr. Russell's account was debited with that fifty-five cents, was it? [161] A. Yes, sir.

Q. With or without his consent?

A. I don't know. It is with.

(Testimony of E. J. Moe.)

Q. And possibly without? A. Yes.

Q. Now, Mr. Moe, that 55 cents interest on a \$196 note, that is not any note that was included in the proof of claim that was filed by your bank in this case, is it? A. I don't know.

Q. Well, referring you to the proof of claim made by the bank, is there any note for \$196 included in that proof of claim? A. No, sir.

Q. Now, is it not a fact, Mr. Moe, that those notes attached to the proof of claim were the only notes that were given by Mr. Russell to the Scandinavian American Bank subsequent to the execution of the chattel mortgage June 29, 1915?

A. I could not say, positively, as to that. He gave us a note and mortgage on an automobile, but whether it was subsequent or prior I could not say.

Q. Do you remember the amount of that note?

A. No, I don't.

Mr. ARNOLD.—I offer "Exhibit No. 37" in evidence.

Mr. MILLER.—We object to it for the reason that it is immaterial and irrelevant to any issue herein at all. It plainly shows that it doesn't apply on any note or any [162] indebtedness with the Scandinavian American Bank for which they have made claim.

The COURT.—I take it its for the purpose to show that moneys were diverted for other purposes rather than paid on the note. The objection will be overruled.

(Testimony of E. J. Moe.)

To which ruling of the Court, an exception was duly reserved.

Q. Drawing your attention to exhibit 38 and check dated October 7, 1916, I will ask you what that is.

A. That is a check payable to the bank for \$1.81.

Q. What was that \$1.81 for, if you remember?

A. Why, there's a note on the check—writing on the check states it was a payment on deposit box.

Q. Do you know anything about it?

A. I don't know anything about it, about the giving of the check, but its possible in payment of a deposit box that Mr. Russell had at the bank.

Q. State whether or not both of these checks exhibit 38 and 37—no, exhibit 38, the check for \$1.81, that was charged after he was adjudicated a bankrupt?

A. I think it was; I don't know when he was adjudicated a bankrupt.

Mr. ARNOLD.—Exhibit No. 38 is offered in evidence.

Mr. MILLER.—We make the same objection.

The COURT.—The objection will be overruled.

To which ruling of the Court, an exception was [163] duly reserved.

Whereupon "Exhibit No. 38" was received in evidence, which is in words and figures as follows:

Big Timber, Mont., Oct. 7, 1916, Scandinavian American Bank, Pay to the order of Bank \$1.81, One and 81/100 Dollars. (Signed) W. N. Russell. Payment on deposit box.

Exhibit No. 37.

Big Timber, Mont. Feb. 23, 1916. Scandinavian

(Testimony of E. J. Moe.)

American Bank, Pay to the order of Bank 55 cts. Only fifty-five cents—Dollars Chgs W. N. Russell. Int. on Note 196.00.

Q. Now, then, referring to that account, Mr. Moe, when did Mr. Russell cease to do—when was the last deposit made by Mr. Russell to the credit of that account?

A. The last deposit on the account was April 5, 1916; but whether he made it or not I could not say.

Q. How much was that? A. \$10.75.

Q. April 5, 1916, prior to that, when was the last deposit made? A. February 11, 1916.

Q. And at the close of business on that day there was how much to his credit? A. \$12.36.

Q. Now, subsequent to November—to February 11, 1916, has there been any business transacted with your bank except this deposit of \$0?

A. There are three checks. [164]

Q. Amounting to how much?

A. One for \$10, \$11.55, \$11.91.

Q. Then practically, as far as Mr. Russell's business was concerned, his account with the bank closed February 11, 1916—that is as far as doing any real business was concerned. A. Yes, sir.

Q. Now, Mr. Moe, when, if you recollect, was the first time subsequent to June 29, 1915, that you ascertained that Mr. Russell, and the Russell Lumber Company, was in difficulties and owing money to creditors?

A. The first time I knew he was in as bad as he was was when Mr. Wilberg came there to buy him out.

(Testimony of E. J. Moe.)

Q. When was that Mr. Wilberg came there to buy him out?

A. I believe he was there from the first part of January—I think he was conferring with him there about the first part of January and made some contract with Mr. Russell in regard to the purchase of the yard, and then returned, 30 days later I think, to take invoice. I think that was along the first part of February—the first day of February as a matter of fact I believe it was then.

Q. Who is this man Wilberg?

A. He is one of the partners in a large lumber concern at Portland, Oregon.

Q. And do you say you think it was about the first of January that Mr. Wilberg came there?

A. Well, I wouldn't say positively as to that, [165] but I believe I can state positively that it was on February 1 that his contract with Mr. Russell was to be fulfilled.

Q. How long prior to February 1st was it that this contract was entered into?

A. Either 30 or 60 days.

Q. And it might have been the early part of December?

A. It might possibly have been that.

Q. Who was instrumental in bringing Mr. Wilberg to Big Timber to purchase this stock of merchandise and business of W. N. Russell?

A. No one that I know of.

Q. Well, did you take any hand in it?

A. No, sir. Mr. Allen of the Allen Lumber Com-

(Testimony of E. J. Moe.)

pany received a letter from a personal friend of his in Portland, stating that Mr. Wilberg was coming into Montana looking for a good location for a yard and that he was advised—Mr. Allen was trying to get him to locate in Big Timber as he was a very good man.

Q. Mr. Allen is who?

A. Manager of the H. M. Allen Lumber yard at Big Timber.

Q. What Allen is that? A. C. W. Allen.

Q. State whether or not C. W. Allen is a stockholder in the Scandinavian American Bank or was a stockholder at that time.

A. He is, and was. [166]

Q. And a director of the bank? A. No, sir.

Q. You say there was a contract entered into with Mr. Wilberg?

A. I think that Mr. Russell and Mr. Wilberg made a contract; yes, sir.

Q. Did you assist in the making of that contract?

A. I did not assist in the making of it; no, sir; I don't believe I was there the date it was drawn up.

Q. Who drew it up, if you know?

A. I think Mr. Campbell did.

Q. Mr. Campbell was the attorney for your bank?

A. Yes, sir.

Q. At that time? A. Yes, sir.

Q. Do you know where the contract is at the present time? A. No, sir; I do not.

Q. That was a contract for the sale of the entire

(Testimony of E. J. Moe.)

business and assets of the W. N. Russell Lumber Company?

Mr. MILLER.—Just a moment, that is objected to on the ground that it is asking for a conclusion of the witness; and for the further reason that the contract itself is the best evidence as to its provisions.

Q. Do you know where that contract is, Mr. Moe?

A. No, sir.

Q. Where did you see it last? [167]

A. I don't know as I've read the contract over.

Q. And then at that time you knew that Mr. Russell was in difficulties with his creditors?

A. No, sir; I did not know it before the making of the contract—before Mr. Russell made the statement at that time to Mr. Wilberg.

Q. Yes. But you knew at that time?

A. At that time?

Q. Yes. A. Yes, sir; I did.

Q. Did you make any inquiry as an officer of the bank, on behalf of the bank, as to the extent of his liabilities at that time?

A. At the time Mr. Wilberg was there?

Q. Yes. A. Yes; I did.

Q. And have you any recollection as to what you found his liabilities were?

A. I don't remember the amount; no, sir.

Q. Now, for the purpose, Mr. Moe, of refreshing your recollection, do you remember of me coming to Big Timber— A. Yes, sir.

Q. —representing the McKee Lumber Company?

A. Yes, sir.

(Testimony of E. J. Moe.)

Q. And do you remember what date that was?

A. No, sir; I don't.

Q. I saw you on more than one occasion with reference to that account of the McKee Lumber Company with W. N. Russell? [168]

A. Only after Mr. Wilberg had been there—the first visit.

Q. Yes. So then whatever date it was that I first saw you with reference to the McKee account, it was after Mr. Wilberg had been there?

A. His first visit.

Q. And that was on his first visit that you ascertained that the—that W. N. Russell and W. N. Russell Lumber Company was in financial difficulties with its creditors?

A. No, sir. It was not on his first visit. It was when he come there to make a settlement for the yard—invoice.

Q. Hadn't the contract been made prior to that?

A. Yes; they had a contract.

Q. You knew at the time the contract was made that he was in difficulties, didn't you?

A. I knew he had some little difficulties, but I did not know he was in like he was.

Q. When did you find out he was in like he was?

A. When you come down.

Q. After Mr. Wilberg had been there, whatever date it was?

A. When Mr. Wilberg come there the second time and you come down—

Q. I had been there before Mr. Wilberg had been

(Testimony of E. J. Moe.)

there the second time? A. Yes.

Q. And how long, if you recollect, before he was there the second time? [169]

A. I don't remember. You was down so often, the second time I can't exactly remember that.

Q. Do you recollect whether I was down there more than once after Mr. Wilberg's first visit until Mr. Wilberg came there the second time?

A. I don't remember you being there more than once after his first visit.

Q. Until Mr. Wilberg came the second time?

A. Yes.

Q. Now, state whether or not when I was in Big Timber with reference to this McKee account, I advised you of the amount of the McKee Lumber Co.?

A. I think you told me the amount; yes, sir.

Q. Did I discuss with you at that time the statement or approximate statement of Mr. Russell's debts and liabilities that he'd given to me?

A. No, sir.

Q. Do you remember me telling you, or do you not, to refresh your memory, what Mr. Russell had told me with reference to his— A. I don't.

Q. —financial standing? A. No, sir.

Q. Now, then, you stated, Mr. Moe, that it was not until Mr. Wilberg came there the second time that you knew the extent of the disaster.

A. I did not.

Q. But when Mr. Wilberg came the first time, I think you have stated that you knew that he was in some difficulty with his creditors? [170]

(Testimony of E. J. Moe.)

A. I did as soon as you come down there after Mr. Wilberg had been there, knew there was something or other.

Q. Prior to that you knew that some of his creditors were crowding him—did you not?

A. I did not know that he was in bad shape; no, sir.

Q. But you knew some of his creditors were crowding him through Big Timber?

A. I know you mentioned creditors there that morning that he hadn't taken care of.

Q. Yes. Now, then, Mr. Moe, after I came down there with reference to the McKee account, you took no steps to change the situation with Mr. Russell and the account of Mr. Russell as far as the bank was concerned?

A. No. I told you he had the contract for the sale of it and would probably get the money.

Q. It was also understood, Mr. Moe, was it not, that if this contract went through that the bank was to get its money one hundred cents on the dollar?

Mr. CAMPBELL.—This is objected to by reason of the fact it is not the best evidence. He may not testify as to the contract—

Mr. ARNOLD.—I'm not asking for the contract.

Mr. CAMPBELL.—You're asking in relation to the agreement.

Mr. ARNOLD.—I'm not. I'm asking for—if this sale was completed, and Mr. Russell completed [171] his negotiations with Mr. Wilberg, whether

(Testimony of E. J. Moe.)

the bank wasn't to get its money one hundred cents on the dollar.

Mr. CAMPBELL.—We withdraw the objection. I don't think its material, but all right.

Mr. ARNOLD.—Yes.

The question was read.

A. It was not understood that way; no, sir.

Q. Well, you expected, did you not, that when Mr. Wilberg paid the purchase price for this stock of merchandise and the property of the Russell Lumber Company—that is assuming he went through with his contract—did you not, and didn't the bank expect that it was going to get the amount of its claim against W. N. Russell?

A. It understood that all of the creditors were to get their money.

Q. Out of the sale of the assets to Mr. Wilberg?

A. I believe that is about the only way.

Q. Did the bank expect it was going to get one hundred cents on the dollar on its claim?

A. It certainly did.

Q. Out of the proceeds of the sale to Wilberg?

A. Yes, sir.

Q. Otherwise the bank would not have permitted the sale to go through and relinquish its mortgage security?

Mr. O'CONNOR.—That is objected to as immaterial. Whether it would or not.

The COURT.—Overruled. [172]

Q. You were an officer of the bank, weren't you?

A. Yes, sir.

(Testimony of E. J. Moe.)

Q. As an officer of the bank, Mr. Moe, would you have permitted Mr. Wilberg to obtain possession of that property by sale unless—to the property being mortgaged to the bank unless the bank got its money?

A. It wouldn't have been up to me. I couldn't have decided that one way or the other.

Q. Now, Mr. Moe, the bank didn't at any time foreclose either its chattel mortgage or real estate mortgage on which it is relying in this case, did it?

A. No, sir.

Q. During the period between June 29, 1915, Mr. Moe, and up to February 11, 1916, I will ask you whether or not the bank, the Scandinavian American Bank, received for collection drafts or accounts—well, we'll say drafts first—against the W. N. Russell—W. N. Russell in the ordinary course of business of the bank, that were not paid and were returned?

A. They may have received drafts; I cannot say.

Q. Well, do you know whether they received drafts on W. N. Russell between June 29, 1915, and February 11, that were paid?

A. I could not say as to that; no, sir.

Q. You would not say whether—wouldn't say there were none, would you?

A. No, sir. [173]

Q. During the period between June 29, 1915, and February 11, 1916, you knew that drafts were made on Mr. Russell through your bank and through banks in Big Timber—did you not?

A. Why, I wouldn't want to say that I knew.

Q. And you wouldn't want to say that you didn't

(Testimony of E. J. Moe.)

know? A. No, sir.

Q. Now, you heard what Mr. Russell testified, Mr. Moe, with reference to a loan made by his father from your bank and which was secured by his father, F. E. Russell, by notes given by W. N. Russell to his father? A. Yes, sir.

Q. Do you remember that transaction?

A. Yes, sir.

Q. Do you remember that amount of the notes that W. N. Russell had given to his father and which were pledged to your bank as security?

A. No, I do not know the amount.

Q. Do you remember when it was?

A. I would not state positively; but I should imagine it was somewhere along in October.

Q. Of 1915? A. Yes, sir.

Q. Who handled this transaction with F. E. Russell,—do you know? A. I did.

Q. Those notes were ultimately returned to W. N. Russell when the \$200 was paid? [174]

A. Yes, sir.

Q. Now, Mr. Moe, from the account of W. N. Russell that you have in your hand, his ledger account, between the 29th day of June, 1915, and the 11th day of February, 1915, will you please tell us the total amount of the deposits that Mr. Russell made in the Scandinavian American Bank?

Mr. O'CONNOR.—That is objected to as immaterial, unless the question is confined to deposits made—all the deposits made during the time of the mortgage.

(Testimony of E. J. Moe.)

The COURT.—Overruled.

To which ruling of the Court, an exception was duly reserved.

I think that is all at this time.

Cross-examination by Mr. CAMPBELL.

Q. Does this ledger account which you have here cover the checking account of Mr. Russell over all the time that he did business with the bank?

A. Well, I cannot say that it does. I think he was doing business with us along in 1914. The sheets for that aren't here.

Q. And all the sheets from his individual account in the individual ledger in the Scandinavian American Bank were not brought along?

A. Wasn't in this bunch; no, sir.

Q. Have you any personal recollection of any [175] checks of Mr. Russell being turned down for lack of funds? A. Yes, sir.

Q. Do you know how many times this occurred?

A. A great many times.

Q. Was it the custom of the bank to allow Mr. Russell to overdraw his account?

A. Not the custom of the bank to allow any one to overdraw.

Q. There's one item which was brought out on direct examination of an overdraft of Mr. Russell in December for \$78.35. Have you any recollection of the circumstances in connection with that overdraft?

A. I have not.

Q. You don't know then what the checks which caused that overdraft were given for?

(Testimony of E. J. Moe.)

A. I could not say what the check was given for. It may have been possible the check came in and he made a deposit—probably called him up that evening, as we usually did, to make a deposit on that day; and he probably did after we'd closed our books during the evening. What the check was given for I could not say.

Q. Did the bank ever allow him to overdraw his account when they did not know of the overdraft and it was taken care of? A. No.

Q. You testified on direct examination something about a contract with a man by the name of Wilberg. [176] Do you remember about when this contract between Mr. Wilberg and Russell was entered into?

Mr. ARNOLD.—Just a moment, the contract itself is the best evidence, and it's objected to. I have no objections if you have the contract, of the contract going in.

The COURT.—The objection will be overruled.

To which ruling of the Court, an exception was duly reserved.

A. I would not state positively, but it was either 30 or 60 days before the first of February, 1916.

Q. Was it not made during the Christmas holiday season in the year 1915?

Mr. ARNOLD.—Just a moment; that is objected to on the ground that the question has already been answered. Suggestive. And also that its not the best evidence. I'm willing to have the contract go in if they have got it.

The COURT.—It is objectionable in that the wit-

(Testimony of E. J. Moe.)

ness states he does not know when it was. That it was either 30 or 60 days before.

Mr. CAMPBELL.—He was put on by Mr. Arnold—this is Arnold's case.

The COURT.—I understand but—is he supposed to be your witness, Mr. Arnold?

Mr. ARNOLD.—Yes, sir.

The COURT.—Very well, the objection is sustained on the ground that the witness has already [177] answered the question.

To which ruling of the Court, an exception was duly reserved.

Q. Do you know when Mr. Wilberg was to take over the lumber yard under the terms of that contract?

Mr. ARNOLD.—Now, that is objected to on the ground that the contract is the best evidence. I was precluded under objection from going into the consideration of that contract on the ground that it was not the best evidence, and the contract itself is the best evidence. I object to it on the ground that it is incompetent; and I state now that if Mr. Campbell will produce that contract I haven't the slightest objection to it going into evidence.

Mr. CAMPBELL.—I don't either, I wish I had it here.

The COURT.—The question was asked if he knew the contents of the contract and he testified he did not know. You may ask him if he knows and then show where the contract is. He does not know

(Testimony of E. J. Moe.)

where it is, he has testified he doesn't know the contract.

Mr. CAMPBELL.—Can't the memory of the witness be refreshed?

The COURT.—Yes, go ahead and ask him the question. The objection is overruled.

Mr. ARNOLD.—If your Honor please, I've no objection [178] to this if they will let me go into the consideration of that contract and other details. I've no objection to them going into it. I don't want to be precluded tho.

Mr. CAMPBELL.—I'm perfectly willing to go into the details of that contract and I'll bring it out on the testimony here now of Mr. Moe. Mr. Moe testified in answer to the question that he didn't know the terms of the contract.

Mr. ARNOLD.—Can't you get the contract here on this afternoon's train?

Mr. CAMPBELL.—I don't know whether my assistant down there can find it or not. Its mighty doubtful.

The COURT.—Well, answer the question.

To which ruling of the Court, an exception was duly reserved.

A. As I stated to Mr. Arnold, I'm perfectly positive it was February 1, 1916.

Q. Did Mr. Wilberg appear on or about the first day of February? A. He did.

Q. What did he do after he got there?

Mr. ARNOLD.—Just a moment: That is objected to on the ground it is incompetent and immaterial.

(Testimony of E. J. Moe.)

The COURT.—Well, it's objectionable on the ground of being indefinite. With reference to [179] this particular transaction, Mr. Campbell?

Mr. CAMPBELL.—All right.

Mr. ARNOLD.—That is objected to on the ground that it is incompetent and immaterial.

The COURT.—We're not going into it very far, Mr. Arnold. You touched on it a little bit.

Mr. ARNOLD.—For the purpose of bringing out the fact that the bank had knowledge of the difficulties of Mr. Russell at the time Mr. Wilberg came there.

The COURT.—The objection will be overruled.

To which ruling of the Court, an exception was duly reserved.

A. He invoiced the yard; Russell Lumber Yard.

Q. Do you know of your own knowledge approximately what that invoice of the yard amounted to?

Mr. ARNOLD.—Wait a minute, just a moment—Oh, Well, let it go.

A. I wouldn't want to say exactly, but I believe it was something over \$5,000.

Q. Between the first day of January, 1916, and the first of February, 1916, how many different times did you have conversation with Mr. Frank Arnold, the attorney present here, about the account of the McKee Lumber Company?

A. I wouldn't say for sure, but I know that I had one conversation with him at Big Timber.

Q. And isn't it a fact also that attorney Arnold called you up over the phone from one to three times

(Testimony of E. J. Moe.)

a day for about a week during the first [180] week in the first of February about the account of the McKee Lumber Company?

A. He called me up several times; I know.

Q. Were you present at a meeting which was had in the banking rooms of the Scandinavian American Bank when there was present Warren Russell, Frank Arnold, Mr. Wilberg, myself and F. E. Russell, along about the end of the first week in February?

A. I remember being present at a meeting, I can't say as I remember F. E. Russell being there; the rest I can.

Q. And what took place at that meeting, if you know?

Mr. ARNOLD.—That is objected to on the ground that it is incompetent and immaterial.

The COURT.—The objection will be sustained. Not proper cross-examination.

Mr. CAMPBELL.—It seems to me, your Honor—

The COURT.—You may make an offer of proof. I think that would be the proper procedure. For you to make an offer of proof of what you want to show.

Mr. CAMPBELL.—If the Court please, Mr. Arnold made a point of the fact that the bank did not take any steps to foreclose this mortgage and allow it to drift along until he was eventually put into bankruptcy, and I'd like to show the circumstances surrounding the closing days of Mr. Russell's financial career, and to show [181] some of the reasons

(Testimony of E. J. Moe.)

why the bank did not take steps to foreclose and to protect their interests. And further to show that the bank was acting in good faith at that time and that they were not acting in bad faith, as Mr. Arnold has endeavored to elicit from this witness.

The COURT.—If you want to make an offer of proof, you can. The question asked the witness as to whether the bank had foreclosed or not is clearly material under the matter.

Mr. O'CONNOR.—The motives of the bank, if the Court please, ought to be material.

The COURT.—If you want to make an offer of proof—if you want to put Mr. Moe on the stand as your witness, you may go into anything that's material.

Mr. O'CONNOR.—All right, I'll do that.

That is all now.

Redirect Examination by Mr. ARNOLD.

Q. Mr. Campbell asked you whether I did not call you up between January 1, 1915, and February 1, 1916, with reference to the McKee account, and I think you answered that I did.

A. I answered that you called me up several times.

Q. And about other accounts also, didn't I?

A. I know that one account in particular. [182]

Q. But I told you that I had others?

A. Oh, yes; you told me you had others.

Q. When I was down there, after Mr. Wilberg had been there, when did I see you?

A. The first time you were in there.

Q. And I told you I had other accounts, as a mat-

(Testimony of E. J. Moe.)

ter of fact I endeavored to get you to pay them on behalf of Mr. Russell, didn't I, Mr. Moe?

A. You tried awfully hard to get me to pay one of them, I know.

Q. Now, you stated in reply to a question from Mr. Campbell that when Mr. Wilberg took that inventory of the yards the early part of February, it invoiced about \$5,000?

A. Invoiced over \$5,000.

Q. Do you remember how much over?

A. No, sir; I don't.

Q. That included of course his estimated value of the buildings and sheds and real estate and the merchandise, did it not? A. I believe it did.

Q. And that was on the theory that the Russell Lumber Company was a growing concern and he would purchase at that price with that idea?

A. I don't understand just what you mean.

Q. Those values were fixed on the theory and with the understanding that he was purchasing a growing business and not a business that was closed down.

A. A growing business—yes. [183]

Q. Now, I got those figures from you, didn't I?

A. I don't know whether you got them from me, or not.

Q. Well, I got them from Mr. Wilberg at the time of this meeting early in February.

A. You might have—I don't know.

Q. Now, if I was to show you these figures would you be able to refresh your recollection from them?

(Testimony of E. J. Moe.)

A. I could not say whether I could tell or not. No, sir.

Q. Now, isn't it a fact, Mr. Moe, that \$5,000, or a little over, included the stock of lumber at Springdale? A. I don't know as to that.

Q. Well, now, I will draw your attention to a slip with some figures on it and ask you, Mr. Moe, if that is the values that were placed on the property in the lumber yard and the property at Springdale?

A. No, sir; I don't think those are the figures.

Q. You don't think that is the figures that we obtained?

A. I don't think that is the total; no, sir.

Q. And you don't think those are the figures that were obtained at the meeting to which reference has been made when Mr. Bert Wilberg was present, F. E. Russell, E. J. Moe, C. W. Campbell, W. N. Russell and myself were present in the rear office of the bank? [184]

A, You may have obtained it from there but I don't think those are the figures. I don't think they are.

Q. You wouldn't say they are not?

A. I wouldn't say that they were and I would not say they were not; I don't think they are.

Q. The contract was—that was entered into with Mr. Wilberg, agreeing as to prices and all that, antedated my visit to Big Timber, did it not?

A. What contract do you mean—

Q. When Mr. Wilberg was there first, which was before my visit to Big Timber, he entered into the

(Testimony of E. J. Moe.)

contract that he has referred to with Mr. Russell, fixing prices at which these things were to be bought.

A. He entered into the contract, I don't know what prices were fixed.

Q. Before I was down there?

A. Before I met you in the bank; yes, sir.

Q. The first time? A. Yes.

Q. Now, you stated to Mr. Campbell that the Scandinavian American Bank turned down checks of W. N. Russell subsequent to June 29, 1915; a great many times for lack of funds. A. Yes, sir.

Q. How soon after the 29th day of June, 1915, did that commence?

A. Well, I could not say as to that.

Q. Quite a while before the first of the year 1916?

[185]

A. Ever since he carried the account in the bank.

Q. What?

A. That happened ever since he carried the account in the bank that he'd have or attempt to have an overdraft.

Q. Or attempt to have one?

A. It wasn't our usual custom to carry overdrafts.

Q. Well, his usual custom; I don't mean the custom of the bank.

A. It don't show it from these sheets.

Q. No; but I'm referring now to the proposition if you turned the checks down, they wouldn't be paid,—were they? A. Yes, afterwards.

Q. Yes; but at the time of the turning them down you wouldn't pay them or else they would appear on

(Testimony of E. J. Moe.)

an overdraft? A. Yes.

Q. Now, then, that was his regular custom then, even before June 29, 1915, to attempt to obtain overdrafts and you turned the checks down?

A. I don't know whether it was his regular custom—

Q. But it frequently occurred?

A. There was frequently checks come in overdrawn.

Q. And there was no change in that policy so far as Mr. Russell was concerned, even after the chattel mortgage was given?

A. Oh, quite a number of times afterwards he had checks turned down.

That is all. [186]

Testimony of J. G. Ellingson, for Respondent.

J. G. ELLINGSON, produced as a witness, having been first duly sworn, upon examination testified as follows:

Examination by Mr. ARNOLD.

Q. You're the trustee in bankruptcy in this case, are you? A. I am.

Q. As such trustee you have in your possession the property and assets of the bankrupt, Wm. Russell, have you?

A. Why, I did have up until the sale of part of it; yes, sir.

Q. And you have in your possession the proceeds of property that has been sold but that has not been disbursed, subject to the order of the Court?

(Testimony of J. G. Ellingson.)

A. Yes, sir.

Q. Now, Mr. Ellingson, at the present time what property has the trustee on hand belonging to the estate of W. N. Russell. A. The accounts—

Q. That have already been referred to.

A. That have already been referred to, and the proceeds from the sale of the stock in yards, also the proceeds from some collections made.

Q. And the proceeds of the sale at Springdale—has that been sold? A. Yes, sir.

Q. Now, then, approximately, what money have you got on hand now? A. About \$2,600. [187]

Q. And that is where?

A. Deposited in the bank at Big Timber,

Now, then, included in that \$2,600 is the proceeds of the sale of merchandise in the yards at Big Timber, two lots that were sold that were not covered by a mortgage to the bank at Big Timber, and the proceeds of the sale of the lumber that was at Springdale— is that correct? A. Yes, sir.

Q. You also have, have you not, included in that \$2,600 an item of \$350 which is the difference between the selling price of the real estate which was mortgaged to the Scandinavian American Bank and sold for \$1,850 less the \$1,500 which was paid to the bank on account of that, under the order of the Court? A. Yes, sir.

Q. That is \$350 included?

A. Included in the sum total.

Q. Yes. Now, as I understand it, the real estate has been sold. A. Yes, sir.

(Testimony of J. G. Ellingson.)

Q. At Big Timber? A. Yes.

Q. And the bank has had paid to it the value of that real estate, that which was mortgaged to the bank, less \$350 which is being held under order of the Court? A. Yes, sir.

Q. Now, then, are there any other assets belonging [188] to the estate, except these book accounts that you have referred to? And which was spoken of the day before?

A. There's no assets of any value; no.

Q. Well, what other assets is there?

A. The homestead or the ranch.

Q. Is there any equity in that in your judgment which will be available as an asset for the benefit of creditors of the estate? A. I do not think so.

Q. There is a mortgage on it?

A. There is a mortgage on it. Two of them.

Q. Do you know the amount of those two mortgages?

A. The mortgage including the interest aggregates about \$5,100.

Q. And that ranch consists of what, how many acres? A. 320 acres.

Q. You've inspected that ranch, have you?

A. I have.

Q. And in your judgment there is no equity in it.

A. I don't think so.

Mr. CAMPBELL.—If the Court please, I move to strike out the answer of the witness as a conclusion of the witness. The fact remains to be seen.

The COURT.—The objection will be overruled, and

(Testimony of J. G. Ellingson.)

taken for what it's worth. It's a conclusion of the witness of course, but that is—it can be shown of course, that [189] he is in the land business and that he is competent to judge.

You're engaged in the real estate business among other businesses at Big Timber—are you?

A. Yes, sir.

Q. Are you familiar with the lands in the vicinity—farm lands in the vicinity of Big Timber?

A. Yes.

Q. And in Sweet Grass county? A. Yes, sir.

Q. Whereabouts is this 320 acres?

A. Out in what is known as the Coulee—in the eastern portion of Sweet Grass county.

Q. You're familiar with the value of other lands in that vicinity, are you? A. Yes, sir.

Q. Basing your opinion on the knowledge that you have as a real estate man and on the sales of land in Sweet Grass county in that vicinity and your inspection and examination of that land, what would you say is the value per acre of that 320 acres?

A. \$10.

Mr. ARNOLD.—At this time it is admitted that the following accounts in favor of the persons named and the amounts have been filed with the referee in bankruptcy here.

Atlas Oil Co., \$154.43. Northwestern Lumber and Shingle Company, \$575.00. McCormick Lumber Co. \$750.50. Central Door and Lumber Company, \$528.-94. [190] Eureka Lumber Company, \$342.43. Eclipse Paint Co., \$141.05. Montana Coal and Iron

(Testimony of J. G. Ellingson.)

Co., \$162.92. Pacific Lumber Agency, \$460.14. Lindstrom Handforth Lumber Co., \$151.75. The Standard Paint Co., \$177.93. The McKee Lumber Co., \$494.64. Pacific States Lumber Company, \$379.22. Blodel Donovan Lumber Co., \$64.56. Dakota Plaster Company, \$49.40. Scandinavian American Bank, \$4,620.90,—that it has been filed as a preferred claim.

Aultman Taylor Manufacturing Co., \$2,590, upon which they claim to have some credit.

Warren N. Russell, \$24.15.

Q. Now, Mr. Ellingson, have you made an examination of the accounts due to the Russell Lumber Co. or you as trustee, amounting to a little over \$1,600, the result of sales made since June 29, 1915, which were referred to day before yesterday?

A. Yes, sir.

Q. Now, after examining those accounts, can you state the amount of those accounts for which credit has exceeded thirty days? In other words, how much of that money has been on a longer credit than 30 days?

Mr. CAMPBELL.—I want to object to that question for the reason that it is incompetent, irrelevant and immaterial; and for the further reason that there has been no showing made that the bank or any of its officers have any knowledge or in any way consented to the extension of credit by [191] Mr. Russell for a period of longer than 30 days.

The COURT.—The objection will be overruled.

(Testimony of J. G. Ellingson.)

To which ruling of the Court, an exception was duly reserved.

A. There's \$1,611.72.

Q. Now,—and those accounts are still unpaid?

A. Those are still unpaid; yes.

Q. Now, Mr. Ellingson, have you checks given by W. N. Russell between June 29, 1915, and February 11, 1915, given to J. Loving? A. I have.

Q. Have you made an examination of those checks?

A. I have not looked them all over but—

Q. But have you computed the amount that those checks total? A. I have.

Q. How much do they total? A. \$2,428.96.

Q. Those were all given, were they, between June 29, 1915, and February 11, 1915? A. Yes, sir.

Q. During that period of time did you know Mr. Loving? A. I did.

Q. And what business was he engaged in at that time?

A. Agent for the Northern Pacific Railway.

Q. At where? A. At Big Timber. [192]

Q. How large a place is Big Timber, Mr. Moe?

A. Why about 2,000 people.

Q. Do you know the place of business of the Scandinavian American Bank? A. I do.

Q. At Big Timber? A. I do.

Q. And that is on what street, Mr. Ellingson?

A. McLeod Street and Main Street.

Q. Do you know where the place of business of the W. N. Russell Lumber Company was?

(Testimony of J. G. Ellingson.)

A. I do.

Q. That was on what street? A. First Avenue.

Q. And how far was the place of business of the W. N. Russell Company from the Scandinavian American Bank?

A. About three and a half blocks; or something like that,

I think that is all.

Cross-examination by Mr. CAMPBELL.

Q. What did you say the total of these checks were to J. Loving? A. \$2,428.96.

Q. And what period of time was those checks covering?

A. The first one is July 3, 1915, and the last one is January 24, 1916. [193]

Q. Do you know what those checks were given for?

A. No, I don't. Only from what—evidently from the check stubs I presume it would be freight.

Q. Do you know of your own knowledge that J. Loving was the local agent of the Northern Pacific Railway Co. at that point during all that time and times that are mentioned in those checks?

A. I cannot say that I know exactly when he left the depot and went to the bank. It was approximately the first of the year I think; but I don't know positively.

Q. You say there are uncollected accounts owing to you now as trustee of Warren Russell, accounts aggregating \$1,611?

(Testimony of J. G. Ellingson.)

Mr. ARNOLD.—He did not say that. He stated that of those accounts that were mentioned there was unpaid that amount. He did not say they were owing to him as trustee— I object to the question.

Mr. CAMPBELL.—All right; I'll withdraw the question.

Q. You say there are uncollected accounts which are owing to W. N. Russell, bankrupt, aggregating \$1,600—\$1,611 to be exact?

A. No—there's \$1,611 due the Russell Company as a bankrupt that are in excess of a 30-day credit of account, of stuff sold between the 29th day of June up to the time of closing.

Q. Has any effort been made to collect these accounts? [194]

A. There has.

Q. What effort?

Mr. ARNOLD.—That is objected to on the ground that it is incompetent and immaterial.

The COURT.—The objection will be overruled.

To which ruling of the Court, an exception was duly reserved.

A. Notices have been mailed to them all.

Q. That is as far as any effort has been made, tho?

A. Two notices is all.

Q. What sum in addition to the \$1,611, accounts owing to the Warren Russell Lumber Co., bankrupt, which have been uncollected to this date?

A. I could not say without looking them up.

Q. Can you estimate the amount?

A. Off-handed I would say about \$200.

(Testimony of J. G. Ellingson.)

Q. What was the total amount of accounts receivable at the time that you became trustee in this matter?

A. My recollection is that the accounts footed \$2,000 or \$2,100.

That is all. [195]

Testimony of E. J. Moe, for Petitioner (Recalled).

E. J. MOE, a witness recalled to the stand for further examination, having been previously sworn, testified as follows:

Direct Examination by Mr. ARNOLD.

Q. Have you now with you, Mr. Moe, the amount of deposits made by W. N. Russell Lumber Company or W. N. Russell in the Scandinavian American Bank between June 29, 1915, and February 11, 1916, inclusive? A. I have.

Q. What was the total amount of those deposits as shown by the ledger account?

A. The total from June 29, 1915, to October say 1916, amounted to \$8,703.35.

Q. I think that is all. Well, I'd like to offer in evidence those ledger sheets, if the Court please.

The COURT.—Well, I think in as much as he has stated the contents of them under oath, that that is sufficient.

Mr. CAMPBELL.—We object to the original sheets offered.

Mr. ARNOLD.—Suppose we ever want that again; suppose there should be a mistrial in this case and it comes back and that record is lost?

(Testimony of E. J. Moe.)

Mr. O'CONNOR.—There's no danger of that record being lost. Bank records aren't usually lost.

Mr. ARNOLD.—Well, I'm not familiar with the banking [196] business, but I offer those in evidence, the ledger account of the W. N. Russell Lumber Company and W. N. Russell, from June 29, 1915, to February 11, 1916, and I will state that I will consent that the attorneys for the bank may withdraw those originals and substitute copies.

The COURT.—Very well; they will be admitted with that understanding.

Whereupon "Exhibit No. 61," five sheets, was admitted in evidence, in words and figures as follows. (See back of transcript.) [197]

**Testimony of W. N. Russell, for Petitioner
(Recalled).**

W. N. RUSSELL, a witness being recalled to the stand, having previously been duly sworn, upon further examination testified as follows:

Direct Examination by Mr. ARNOLD.

Q. I will draw your attention, Mr. Russell, to checks given by you to Mr. Loving between the 3d day of July, 1915, and February 11, 1916. Aggregating, according to the figures of Mr. Ellingson, \$2,428.96. Those checks were all drawn by you, were they?

A. Looking over them hurriedly I believe they were all given—drawn—signed by me.

Q. And given to Mr. Loving and paid through the Scandinavian American Bank and charged to your account?

(Testimony of W. N. Russell.)

A. I think that they were all paid with the exception of two or three I noticed.

Q. Those were paid, were they not?

A. They have notices on them—I don't—didn't stop to see whether they had been paid or not.

Q. Now, what were those checks given to Mr. Loving for?

A. The great amount of these checks were given for freight. Possibly one or two for lease on right of way and possibly a few for demurrage on cars. And there may be one or two of them sight drafts attached to shipments and paid with the freight.

Q. The greater part of the amount would be for [198] freight.

A. Yes, sir.

Q. Now, Mr. Russell, referring to these notes, merchandise that was purchased subsequent to the giving of that chattel mortgage from the persons we've already gone into, you stated that these—that this merchandise was received into your yards—I'm talking now of what was purchased subsequent to the giving of the chattel mortgage, and prior to the time of the filing of the petition, Blondel Donovan, McKee, and others, merchandise received into your yards—

A. Yes.

Q. —now, then I will ask you whether or not the portion of that lumber that was received from them, and received into your yard, that was not sold, passed into the hands of the trustee at the time of your bankruptcy?

A. It did.

Q. Now—I don't know whether I asked you the

(Testimony of W. N. Russell.)

question, of the amount of your indebtedness to your father at the time that this chattel mortgage was given—how large or how much did you owe him at that time? A. I think about \$3,100.

Q. Now, then, outside of the property that was mortgaged to the bank, leaving that out of consideration, at the time you gave the mortgage to the bank, did you or did you not retain enough assets in your possession to pay your father and your other [199] creditors who were in existence on June 29, 1915?

Mr. O'CONNOR.—That is objected to as immaterial.

The COURT.—What is your idea, Mr. Arnold?

Mr. ARNOLD.—Simply to show that the bank, assuming that it had a right to take all of this property mortgaged to it, there was not enough left in Russell's possession to pay his other creditors that then existed.

Mr. O'CONNOR.—There is no contention made here that preference was given.

The COURT.—Will you read the question?

The question was read.

The COURT.—Answer the question.

A. I had enough to pay them all at that time; yes.

Q. I mean leaving out what you mortgaged to the bank, you say you think the value of the property that you mortgaged to the bank was \$6,000 in merchandise, and \$2,000 in real estate; but leaving that \$8,000 out of consideration, not including that, did

(Testimony of W. N. Russell.)

you have enough exclusive of that \$8,000 mortgaged to the bank, to pay your father and your other creditors that you were owing money to on the 29th day of June, 1915?

A. Yes, I valued my ranch at enough to pay the whole works.

Q. When you speak of the ranch you speak of the ranch that was mortgaged for \$4,000?

A. I don't know whether it was mortgaged for that amount at that time.

Q. Wasn't it mortgaged at that time to the [200] Citizens State Bank and the Aultman Taylor Co.?

A. Whether it was or not, there was such an agreement under foot that the ranch as far as I was concerned would be clear.

Q. Outside of the ranch itself though, leaving the ranch out of consideration.

Mr. O'CONNOR.—Well, are you going down the line and eliminate one thing after another until you finally get him broke?

Mr. ARNOLD.—Well, we've got testimony here that the ranch was valued at \$10 an acre.

Mr. O'CONNOR.—You're trying to impeach your own witness.

Mr. ARNOLD.—It's a new one on me if you can't—

Mr. O'CONNOR.—Not unless you do it in the proper way.

The COURT.—Well, that would be immaterial.

Q. Well, then, what assets did you have on June

(Testimony of W. N. Russell.)

29, 1915, in addition to your equity in the ranch and the property on the ranch in this \$6,000—this mortgage—this merchandise that was mortgaged to the bank, and this real estate that was mortgaged to the bank?

A. I had considerable on my books due at that time.

Q. That was all, was it?

A. I had a little other real estate at that time, I believe.

Q. What was the approximate amount of the book accounts—approximately, you needn't figure them exactly. [201]

A. Approximately about \$3,000.

Q. And this other bit of real estate?

A. That, I don't know the exact value of it; it was property out of this county, my father had gotten for me.

Q. You haven't got it now?

A. No. Whether he has left them in my name yet or not; I don't know.

Q. About what was the value of it?

A. Well, sir; I don't know that.

Q. Two or three hundred dollars?

A. Possibly fifteen hundred.

Q. Where is it? A. Lots in Three Forks.

Q. And that is all you had?

A. And the way the lots were advancing, I don't know myself just what they were worth. They were a present to me and whether he took them back to sell them before that date and carried me for a little

(Testimony of W. N. Russell.)

more credit or not, I don't know; but that was outside of the business anyhow.

That is all.

Cross-examination by Mr. CAMPBELL.

Q. You say that the date you gave a mortgage to the bank you were indebted to your father in about \$3,100?

A. Well, I did not make the statement; no. I said I thought so; but that is merely a guess. [202] I have nothing to show with me what it was.

Q. Did you inform the bank or any of its officials at the time you negotiated the loan of \$4,165, that you were indebted to your father in that amount or anything at all?

A. Just one account that I asked them for additional money to settle was all, a \$300 account held by Mr. Selters. I asked the bank for that to settle that account.

Q. None of those checks which were given to J. Loving which were spoken of here a little while ago, aggregating \$2,498.96, was given to him as an officer of the bank, were they? A. No, they never were.

Q. They were given to him as agent of the Northern Pacific Railway? A. They were.

It is admitted by Mr. Arnold that the checks in question were given for freight.

Q. Have you any idea of the amount of that \$2,428.96 was paid for bills of lading attached to the freight bills?

Mr. ARNOLD.—I've just admitted in the record

(Testimony of W. N. Russell.)

that that \$2,496 was paid for freight.

Mr. CAMPBELL.—Oh, yes, but he told you a while ago that part of them were—

Mr. ARNOLD.—If your Honor please, we've just admitted by stipulation that \$2,496 was paid for freight.

The COURT.—Why go into it if you have admitted it? [203]

Mr. CAMPBELL.—I want to show that part of it was bill of lading.

Mr. ARNOLD.—We've just admitted it was paid for freight; and it went into the record.

Mr. CAMPBELL.—But he testified a little while ago—

Mr. ARNOLD.—If your admission isn't worth anything, don't make it then.

Mr. CAMPBELL.—Part of that might not only have been for freight but it might have been goods sent in there and paid for before it was delivered.

Mr. ARNOLD.—If the Court please, at their request I admitted it was paid for freight and now they want to show it wasn't.

The COURT.—Answer the question. Overruled.

To which ruling of the Court, an exception was duly reserved.

A. No, I have not. But I don't think that over a hundred or two hundred dollars of it. I might add there, it's a little hard to try to have charge of everything and—in my hauling stuff to Lake Basin I often times received checks from those people there

(Testimony of W. N. Russell.)

which I put in my—through my bank—checked out—

Mr. ARNOLD.—Just a moment, just a moment, I object to the answer of the witness because that has nothing to do with the Loving checks on which he is being examined now.

The COURT.—The objection will be sustained on [204] the ground that it is not responsive to the question.

Q. You stated in some of your prior testimony, did you not, that at the time that this mortgage was given that you were solvent?

Mr. ARNOLD.—Just a moment, that is objected to on the ground if he said that, this is repetition.

Mr. CAMPBELL.—I asked him if he did say that. There's nothing wrong about that.

Mr. ARNOLD.—Object to it on the ground that it is repetition, having already been gone into on previous examination; and on the ground that whether or not he was solvent would be a conclusion of the witness, and the question of whether or not he was insolvent could only be—or solvent could only be determined after a full inventory of the assets and liabilities had been taken.

The COURT.—You may answer the question yes or no; whether you said that.

A. No.

Q. If you hadn't been attached in January and had been left alone by your creditors could you have paid your debts? A. Yes.

(Testimony of W. N. Russell.)

Mr. ARNOLD.—Just a moment—just a moment. I move that that answer be stricken out until I can put an objection in. [205]

The COURT.—Strike it out.

Q. Now, then, that is objected to on the ground that it is argumentative, and calling for a conclusion of the witness; and there is nothing in the evidence to show that he was ever attached.

The COURT.—The objection will be sustained. It is objectionable on all of those grounds.

Q. Were you attached during the month of January?

Mr. ARNOLD.—Just a moment. That is objected to on the ground that it calls for a conclusion of fact and conclusion of law; and it is immaterial whether he was attached or whether he was not attached. Have a right to attach people's property under the laws of this state.

The COURT.—It is objectionable in that it is not proper cross-examination.

Q. Well, who was it that was continually harassing you in the carrying on of your business during the pendency of the lien—mortgage to the Scandinavian American Bank?

Mr. ARNOLD.—That is objected to on the ground that it is immaterial, calling for the conclusion of the witness, and argumentative.

The COURT.—Well, as I understand it, gentlemen, there is no evidence here to show that anybody was harassing him. The objection will be sustained.

(Testimony of W. N. Russell.)

No evidence to show anybody was harassing him.

[206]

Mr. O'CONNOR.—The record is replete with evidence that creditors were continually bothering him through their representatives.

The COURT.—The word “harassing” has never been used in this court.

Mr. O'CONNOR.—Well, but there's no difference between “harassing” and “bothering.”

The COURT.—There's a way of getting at that, Mr. Campbell. The objection is sustained.

Mr. CAMPBELL.—Well, I believe that is all any way. [207]

Testimony of Frank Arnold, for Petitioner.

FRANK ARNOLD, duly called as a witness in the above-entitled matter, having been first duly sworn, testified as follows.

Mr. ARNOLD.—I desire to state that the first time that I saw Mr. Moe with reference to the account of the McKee Lumber Company was on the 23d day of December, 1915.

Mr. O'CONNOR.—I move to strike the evidence of the witness out as being immaterial. He's probably seen a good many people the past year.

The COURT.—The objection will be overruled. Proceed, Mr. Arnold.

Mr. ARNOLD.—I was present at the meeting in the rear room of the Scandinavian American Bank at the time that Mr. Wilberg was there with F. E. Russell, C. W. Campbell, E. J. Moe and W. N. Rus-

(Testimony of Frank Arnold.)

sell, when the question of the sale of the merchandise in the lumber yards and the real estate at Big Timber was under discussion with Mr. Wilberg, and there was discussed at that time the inventory that had been taken by Mr. Wilberg, and he gave to me at that time in the presence of Mr. Moe and Mr. Campbell the values that he placed on the different properties of W. N. Russell. That memorandum was made by me at that time in the presence of those persons from figures given me by Mr. Wilberg in their presence, and on the bank deposit slip of the Scandinavian American Bank. Figures were taken down by me at that time and I have those [208] figures with me and the slip on which they were taken down and I offer that in evidence and ask that it be marked objectors' "Exhibit No. 62."

Mr. CAMPBELL.—There is no objection to that.

Whereupon "Exhibit No. 62" was received in evidence and is in words and figures as follows:

Mdse B T	2384 45
Bldgs	1445 30
R E	385 00
Coal Sheds	350 00
Safe	40 00
Fixtures	20 00
	<hr/>
	4624 75
Merchandise Springdale	448 88
	<hr/>
Coal. B a/c	5073 63

(Back.) Deposit slip, Scandinavian American Bank.

(Testimony of Frank Arnold.)

Cross-examination by Mr. CAMPBELL.

Q. Do you know of your own knowledge that the totals as listed in objectors' "Exhibit No. 62" contains all of the stock of merchandise and real estate which Mr. Wilberg had agreed to buy from Mr. Russell?

A. Not of my own knowledge except the statements that were made at that time in the presence of Mr. Moe and yourself and—by Mr. Wilberg that that was all of the assets of W. N. Russell, including the item which is marked Springdale there, with the exception of about— [209]

Mr. O'CONNOR.—We move to strike out that answer, if the Court please.

The COURT.—Strike it out—all of it?

Mr. O'CONNOR.—It's all hearsay.

The COURT.—Strike it out.

Mr. ARNOLD.—No; I don't know of my own knowledge.

Q. You don't know then of there being some two or three hundred dollars worth of materials and supplies that was not included in the memorandum which Mr. Russell had?

A. I was just going to explain that, and you insisted that I answer the question yes or no. If you want me to explain that, I'll do so.

Q. Well, answer the question.

A. Not of my own personal knowledge, because I never saw it, but I do know of what was discussed at that time. Now, then, I will state that at the time

(Testimony of Frank Arnold.)

that this inventory was presented in the presence of Mr. Moe, in the presence of Mr. Wilberg, in the presence of Mr. Campbell, W. N. Russell, F. E. Russell and myself, it was ascertained that there was some merchandise at Big Timber in a partly constructed building, or in the vicinity of a partly constructed building, to be used in the construction of that building, and Mr. Wilberg estimated that was valued at about \$200. But of my own personal knowledge I know nothing of it.

Q. You were present as you stated at that meeting which was held in the banking rooms of the Scandinavian [210] American Bank, where Mr. Wilberg was present and Mr. Russell, myself and E. J. Moe—I'd like to have you state now what transpired at that meeting with reference to the business of the—of W. N. Russell and of its being taken over by Mr. Wilberg.

A. In what way do you mean?

Q. I'd like to have you tell just what transpired there at that meeting that day in a general way. State, if you want to, what the object of the meeting was that day.

A. Why, yes; I'll tell you what took place then. Mr. Wilberg had an agreement to purchase the assets of the W. N. Russell Company at a given price; pursuant to that agreement he came from Portland to counsel me. It was understood prior to the agreement with Mr. Moe and myself and with Mr. Campbell that when Mr. Wilberg was there ready to close

(Testimony of Frank Arnold.)

the deal, I was to be there and I was to have the account of the McKee Lumber Company which at that time I had for collection. And which had been placed I think at that time into judgment. And it was further understood that the Scandinavian American Bank was to receive out of the moneys paid by Mr. Wilberg the full amount of its indebtedness.

Q. Is that all that transpired at that meeting?

A. Why, I can't tell you every word that was said in detail, because we discussed the business of the W. N. Russell Company pro and con for an hour or an hour and a half. [211]

Q. What else transpired with reference to the closing of the deal between Mr. Wilberg and Mr. Russell?

A. Why, the deal was never closed. You'll have to be a little more definite, Mr. Campbell, and ask your questions and I'll endeavor to answer them for you.

Q. Well, why wasn't the deal closed?

A. Why, because Mr. Wilberg wouldn't come—wouldn't go through with the deal.

Q. And what caused Mr. Wilberg to back down on it?

ARNOLD.—That is objected to on the ground that it is hearsay, calling for the conclusion of the witness and not the best evidence.

The COURT.—Well, it's objectionable further, because it is immaterial. The reason why Mr. Wil-

(Testimony of Frank Arnold.)

berg backed out of it we don't care.

Mr. O'CONNOR.—Supposing he was compelled to back out of it and was partly interested in throwing the man into bankruptcy. That is the objection of the question.

Mr. ARNOLD.—I object to it on the ground that it is immaterial in addition to the other objection.

The COURT.—The objection will be sustained.

To which ruling of the Court, an exception was duly reserved.

Q. Now, Mr. Arnold, as a matter of fact, the understanding which you stated a moment ago, which you said you had with Mr. Moe and myself relative [212] to the claim of the McKee Manufacturing Company—

A. Whatever McKee it was—it was a McKee of some kind.

Q. —was altogether—I was speaking as to the payment of their claim—was altogether and solely an understanding with yourself alone and not with Mr. Moe and myself or any of the officials of the bank.

A. Why, the understanding was with Mr. Moe and with you, representing the Scandinavian American Bank, that you were behind Mr. Wilberg in consummating that deal; and he was to receive the assistance of the bank, and was receiving it, and your assistance, and I understood you were acting also as Mr. Wilberg's attorney, and it was understood that Mr. Wilberg, in the event that he paid for those as-

(Testimony of Frank Arnold.)

sets and that business of W. N. Russell, that the Scandinavian American Bank was to receive every dollar it had coming to it, and taking in the Springdale property, there would be sufficient also to take care of the amount of the account of the McKee Lumber Company.

Q. Now, as a matter of fact, Mr. Arnold, Mr. Moe nor I acting in behalf of the Scandinavian American Bank, nor Mr. Wilberg, never agreed with you prior to the day when that meeting was held nor on that day, to pay the claim of the McKee Company in full.

A. The understanding distinctly was there would be enough out of what he was going to pay for that [213] business taking in the Springdale property also at the valuations that he placed on it; according to the figures that I put down on that slip there would be enough to pay the claim of the McKee Lumber Company as well as the claim of the Scandinavian American Bank. And I was invited down there to that conference to be there when that deal was closed with that very idea in mind.

Q. If you hadn't been there that day the deal would have went through all right—would it not?

Mr. ARNOLD.—That is objected to as calling for the conclusion of the witness and immaterial.

The COURT.—The objection will be sustained.

Q. Just the day before that conference or meeting was held in the bank, you had issued an attachment or an execution on a judgment, which you had obtained for the McKee Lumber Company.

(Testimony of Frank Arnold.)

Mr. ARNOLD.—That is objected to on the ground that it is immaterial.

The COURT.—Objection is sustained on the ground that it is not proper cross-examination and immaterial.

To which ruling of the Court, an exception was duly reserved.

That is all.

Noon recess.

Reconvening, further testimony was received.

Mr. ARNOLD.—The objectors rest. [214]

Testimony of J. Loving, for Petitioner.

Mr. J. LOVING, produced as a witness, having been first duly sworn, upon examination testified as follows:

Direct Examination by Mr. CAMPBELL.

Q. State your name and residence.

A. J. Loving; Big Timber, Montana.

Q. Are you connected in any way in an official capacity or otherwise with the Scandinavian American Bank of Big Timber? A. Cashier.

Q. How long have you held the position of cashier? A. Since the first of the year.

Q. What business were you engaged in prior to that time?

A. Agent for the Northern Pacific Ry. Co. at Big Timber.

Q. What time, if you can tell exactly, did you quit your employment with the Northern Pacific?

A. The first day of February, 1916.

(Testimony of J. Loving.)

Q. Then for a while you were holding the position of cashier of the Scandinavian American Bank and agent of the Northern Pacific? A. I was.

Q. Prior to your election to the office of cashier of the Scandinavian American Bank, were you connected with that institution in any way, and if so what?

A. Why, vice-president in the year 1915. [215]

Q. And prior to that did you have—

A. I was on the board of directors.

Q. During the time you have been connected with the Scandinavian American Bank, do you know of any of the dealings had between that bank and W. N. Russell? A. Some of them; yes, sir.

Q. Do you have any recollection of the loan that was made to W. N. Russell on the 29th day of June, 1915? A. I do.

Q. Were you consulted in regard to the making of that loan at the time it was made? A. I was.

Q. Was there any particular time that you were consulted in regard to that loan?

Mr. ARNOLD.—Wait a moment; that is objected to on the ground that it is incompetent, irrelevant and immaterial. Consulted by whom, and consulted in what way?

Mr. CAMPBELL.—I'll withdraw that question and state it in another way.

Q. Were you present at a meeting of the discount committee of the Scandinavian American Bank that was held on or about the 29th day of June, or just prior to the 29th day of June, at which W. P. Frank-

(Testimony of J. Loving.)

lin and E. J. Moe was present, at which meeting the application of Warren Russell for an additional loan was discussed? A. I was. [216]

Q. What was the nature of that discussion?

Mr. ARNOLD.—Just a moment; that is objected to on the ground that it is incompetent, irrelevant and immaterial, unless W. N. Russell was a party to the discussion, and present at the meeting; self-serving evidence; and anything that the officers of the bank did prior to the making—

Mr. CAMPBELL.—Well, I'll withdraw the question.

Q. Was Mr. W. N. Russell present at that meeting? A. He was.

Q. What was the nature of the discussion that took place at that meeting?

Mr. ARNOLD.—That is objected to unless it is confined to—

Mr. CAMPBELL.—All right.

Q. With regard to the application of Warren Russell for a loan?

A. It was before the discount committee to discuss his condition and see whether we were justified in making him an additional loan.

Q. Do you remember the additional loan that he was asking for at that time?

A. I don't remember the exact amount of the additional loan that he requested.

Q. Have you any recollection of about what amount it was?

A. Well, something like three hundred dollars.

(Testimony of J. Loving.)

Q. What part, if any, did you take in making that loan? [217]

Mr. ARNOLD.—That is objected to on the ground that it is immaterial, what was done not what part he took.

The COURT.—The objection will be overruled.

To which ruling of the Court, an exception was duly reserved.

A. Well, I don't know that I understand just exactly what you mean.

Q. Did you at that time estimate the value of the security which Mr. Russell was offering to give to the bank?

Mr. ARNOLD.—Just a moment, that is objected to on the ground that there has been no foundation laid, the witness hasn't shown himself qualified to make an estimate, and incompetent and immaterial.

The COURT.—The objection will be overruled.

To which ruling of the Court, an exception was duly reserved.

A. I went down and looked through his yards to see how much stock there was.

Mr. ARNOLD.—I move that the answer be stricken out as not responsive to the question.

The COURT.—What was the question?

The question was read to the Court.

The COURT.—Answer the question, yes or no.

A. I did.

The COURT.—Strike the rest out as not responsive.

Q. What recommendations did you make to the

(Testimony of J. Loving.)

discount committee as to the propriety of making [218] this loan after you had made this estimate?

Mr. ARNOLD.—Just a moment; that is objected to on the ground that it is incompetent and a self-serving declaration; immaterial; no showing being made that any recommendation he did make, was made in the presence of W. N. Russell.

The COURT.—The objection will be sustained.

To which ruling of the Court the bank, by its counsel, then and there duly excepted.

Q. After making that investigation of the security did you make a report to the discount committee?

Mr. ARNOLD.—That is objected to on the ground that it is incompetent, irrelevant and immaterial, unless Mr. Russell was there at the time.

Mr. O'CONNOR.—The question was simply, did he make the report? What difference does that make, whether Russell was there?

Mr. ARNOLD.—Well, I'm objecting to it; let me put my objections in Mr. O'Connor.

The COURT.—There will be no objection to that, the next question will be, What was the report?

Mr. O'CONNOR.—No, no; not that question.

The COURT.—The objection will be overruled.

To which ruling of the Court, an exception was duly reserved. A. I did make a report.

Q. Was your report acted upon by the discount [219] committee, and was Mr. Russell present when the discount committee received this report?

A. I could not say now whether Mr. Russell was

(Testimony of J. Loving.)

present at that time or not when I reported to the discount committee.

Q. Did the committee then act on your report?

Mr. ARNOLD.—That is objected to as incompetent, irrelevant and immaterial.

The COURT.—The objection will be overruled.

To which ruling of the Court, an exception was duly reserved.

A. They did.

Q. What representations did Mr. Russell make to the discount committee of the bank at the time he presented his application to this committee for a loan in regard to security which he had and as to his financial standing at that time?

A. He represented that he had \$5,500 worth of stock, \$5,500 or \$6,000 worth of stock on hand at that time, and this additional money would clean him up and put him in shape so that he would not require any future advances.

Q. Did he tell you then what he expected to use this advance of \$300 or thereabouts for?

A. It was to pay some wholesale dealer, I don't remember who it was.

Q. In making the loans, what is the custom of the bank and banks generally in regard to the amount of security that is taken for loans?

Mr. ARNOLD.—Just a moment. That is objected to [220] on the ground that it is incompetent, irrelevant and immaterial. The custom of banks making loans would have no bearing on this case. The question is, what they did.

(Testimony of J. Loving.)

Mr. CAMPBELL.—If the Court please, there was some testimony at least on the part of the objectors in this case, to the effect that this security that was taken at this time was in excess of what was necessary to secure this loan.

The COURT.—The question in itself as it would be, would be incompetent unless you show that the course of the bank in this particular case was the usual custom of banks and then if your point is for some showing of good faith on the part of the bank—if that is your idea, to show that; there is not anything here, as far as I can see, that attacks the good faith of the bank. You may answer the question if it will show that they followed the usual custom. The question of what is the general custom of making loans among banks would be objectionable.

Mr. ARNOLD.—The idea of showing their general custom, showing the custom of this bank and then calling it a general custom, is too ridiculous to think of.

The COURT.—The objection will be overruled. Answer the question. [221]

To which ruling of the Court, an exception was duly reserved.

The COURT.—Unless it is shown that the custom of the bank—practice—is that of the general custom of banks, then it will be stricken out.

A. It is our custom to loan on 50 per cent of the valuation.

Mr. ARNOLD.—I move that that be stricken out as not responsive to the question.

(Testimony of J. Loving.)

The COURT.—Strike it out.

Q. On what basis does this bank usually make loans?

Mr. ARNOLD.—That is objected to on the ground that it is incompetent, immaterial; custom of this bank may be very nice but that does not have any bearing in this case.

The COURT.—The objection will be overruled. Answer the question.

To which ruling of the Court, an exception was duly reserved.

Q. It is our custom to loan on 50 per cent of the valuation.

Mr. ARNOLD.—I move that that answer be stricken out as not responsive to the question.

The COURT.—The objection will be overruled.

To which ruling of the Court, an exception was duly reserved.

Q. Was the custom of the bank followed in this particular instance? [222]

Mr. ARNOLD.—That is objected to as calling for the conclusion of the witness, and the transaction speaks for itself, and it is a question for the Court to say whether the custom was followed in this particular instance. We don't care about him saying whether it was followed or not. Its the facts we want. Its a question for the Court whether they followed the usual custom. Its very nice for him to say he did.

Mr. O'CONNOR.—He knows whether he did or not.

(Testimony of J. Loving.)

Mr. ARNOLD.—Its for the Court to say whether he did or not.

The COURT.—The objection will be sustained.

To which ruling of the Court, an exception was duly reserved.

That is all.

Cross-examination by Mr. ARNOLD.

Q. Now, you say he made representations as to his security and financial standing at the time of a meeting of this discount committee? A. Yes, sir.

Q. Where was the meeting held?

A. In the banking rooms.

Q. How did you happen to have this meeting?

A. Of the discount committee?

Q. Yes. [223]

It's a custom of the bank in a loan of any size to have a discount committee O. K. the loan.

Q. Well, what would you call a loan of some size?

A. Well, anything about a thousand or \$1,500.

Q. Well, now, as a matter of fact, everything with the exception of \$300 had been all loaned to Mr. Russell at that time—hadn't it?

A. Something like that; yes.

Q. Then all that this committee of your banking institution then had to consider was the additional loan of \$300—isn't that a fact? A. Yes.

Q. The other had already gone. A. Yes.

Q. Now, what was it that called forth this meeting, Mr. Loving? A. It is the custom of the—

Q. Oh, I know, but this particular meeting. That is the custom when making big loans of a thousand

(Testimony of J. Loving.)

dollars or more, but this little loan of \$300, what was it that called for the meeting at this time on this little \$300 loan?

A. The meeting was called to see whether we could loan him that at that time or not.

Q. You were then deviating from the usual custom in this case. It was only big loans that you had the meeting of the discount committee—wasn't it?

A. We have meetings of the discount committee sometimes on a hundred dollar loan,—

Q. Oh, you do? [224]

A. —don't necessarily follow that because we have to O. K. a thousand dollar loan we never O. K. a loan of a hundred dollars.

Q. Well, you remember this meeting particularly, do you? A. Yes.

Q. Do you remember the date of it?

A. Well, possibly it was the day before,—or it might have been that day. It wouldn't be—it will be about the time, the date of the note.

Q. Did you have any statement in writing from Mr. Russell at that time?

A. It was a verbal statement.

Q. Just a verbal statement. Your bank had been doing business with him quite a long while, hadn't it?

A. Yes, sir.

Q. The account hadn't been very satisfactory—had it?

A. Well, no. Not very satisfactory.

Q. And did you have any security at that time?

A. We did.

(Testimony of J. Loving.)

Q. What was the security on?

A. Well, it was on the real estate and on the stock he had.

Q. That was before this transaction— A. Yes.

Q. —of June 29, 1915? A. Yes, sir.

Q. And how long did this meeting at which Mr. [225] Russell was present last?

A. Oh, that is pretty hard to say; but I should judge 40 or 50 minutes; possibly an hour.

Q. Was Mr. Russell present all of the time?

A. Most of the time.

Q. And you went into his financial condition—did you?

A. We had him state his case the best he could; yes, sir.

Q. When you speak of it being "the best he could," he presented no books to you?

A. No, he did not have his books there.

Q. Didn't he given you to understand at that time that he didn't keep any books of account?

A. I don't think so.

Q. You didn't go to see them?

A. We didn't go to see them; no.

Q. The entire or any member of the discount committee, as far as you know?

A. No. Not as far as I know.

Q. Now, did you ask him who his creditors were?

A. We asked him how much he owed, outstanding. That is, how much he owed for lumber he'd received. And material. Lumber.

(Testimony of J. Loving.)

Q. What did he tell you?

A. Something like \$300 he said would clean him up.

Q. Would pay him entirely? A. Yes.

Q. And did you go into this chattel mortgage with him, tell him what he'd have to do. [226]

A. He was told how we'd fix it up.

Q. How you'd fix it up?

A. The only way we could do it.

Q. And did you tell him what he'd have to do when he got this loan, in relation to the chattel mortgage?

A. Well, I don't remember as to that—the specific conditions—what he'd have to do I couldn't say as to that.

Q. That, of course that escaped—that you have no independent recollection of.

A. No; I could not say.

Q. Now, you say your custom is 50 per cent; 50 per cent of what? A. Of the valuation.

Q. Well, its not customary for your bank, is it, to take a chattel mortgage on 50 per cent of the value of a stock of merchandise, of all of the merchandise that he is doing business with?

A. Well, that depends on the merchant.

Q. Well, isn't it an exceptional thing, Mr. Loving, to take a chattel mortgage on a stock of merchandise of your customers? Isn't it the exception and not the rule?

A. Well, it might be considered an exception; yes.

Q. And its only on stress of circumstances, Mr. Loving, when you consider a man's financial condition

(Testimony of J. Loving.)

not good, that you take chattel mortgages on his stock of merchandise? [227]

A. Well, yes.

Q. This chattel mortgage was given so that the bank would be protected and so that Mr. Russell could carry on the business—wasn't it? A. Yes.

Q. And your idea was that he should carry on the business? A. Yes.

Q. Your idea also and your understanding with Mr. Russell was that he was to carry on the business in the same way he'd carried it on, too?

A. Well, I don't know as he was to carry it on in the same way he'd carried it on before.

Q. Well, wasn't that what he did and what you thought he was going to do?

Mr. O'CONNOR.—I object to the question for the reason that it is not proper cross-examination.

Mr. ARNOLD.—If the Court please, they have gone into the good faith,—they have attempted to show the good faith of the bank in executing this mortgage, and they have shown the transaction on that day. Now, I want to show on cross-examination, develop what took place at that time.

The COURT.—They didn't go into the matter of this chattel mortgage at all with this witness.

Mr. O'CONNOR.—Not as to any reports or anything of that kind. Just simply as to the circumstances [228] surrounding its execution only.

Mr. ARNOLD.—For the purpose of showing good faith. Now, then, I want to show by this witness at that time it was never understood that he was to

(Testimony of J. Loving.)

change his manner of conducting his business or anything else.

Mr. O'CONNOR.—That wasn't inquired into at all.

The COURT.—It's not proper cross-examination. It will be necessary for you to put him on as your own witness if you want to bring that out.

Q. Now, Mr. Loving, you've been an officer of the bank during the year 1915—were you?

A. Yes, sir.

Q. What active part did you take in the management of the bank except to act on the discount committee?

A. That was all.

Q. That was all you did? A. Yes, sir.

Q. As far as you know he continued to carry on the business after June 29 in the same manner that he did prior to June 29, during the year 1915?

Mr. O'CONNOR.—Just a moment; object to that question on the ground that it is not proper cross-examination.

The COURT.—The objection will be sustained. There is no testimony here to show that he knows how he conducted his business after that time, as I take it. [229]

Q. During the year 1915, did you keep in touch with the business of the W. N. Russell Lumber Company, in so far as the bank was interested in it?

Mr. O'CONNOR.—That is objected to as not proper cross-examination.

The COURT.—The objection will be overruled.

(Testimony of J. Loving.)

To which ruling of the Court, an exception was duly reserved.

A. Well, of course, I tried to see what he was doing—how he was getting along.

Q. You knew he was in difficulties, did you?

A. Well,—

Mr. O'CONNOR.—Wait, that is objected to as not proper cross-examination.

The COURT.—You may state whether you know or not, as an officer of the bank.

A. I didn't know of any business difficulties, only that he owed the Scandinavian American Bank—that money.

Q. Was anything said to Mr. Russell at the meeting of the discount committee with reference to his purchasing lumber and merchandise subsequent to the giving of that chattel mortgage?

A. Which chattel mortgage?

Q. This one of June 29th.

A. That, I could not say as to that.

Q. You would not say there was not?

A. I could not say.

I think that is all. [230]

Redirect Examination by Mr. CAMPBELL.

Q. What security, if you know, did the bank have on any money which it had loaned to Mr. Russell prior to June 29, 1915, and which had not been paid up June 29th?

Mr. ARNOLD.—That is objected to on the ground that it is incompetent and immaterial. If there is—

(Testimony of J. Loving.)

Mr. O'CONNOR.—Why, you brought that out yourself.

Mr. ARNOLD.—I did not.

Mr. O'CONNOR.—Why yes, you did. Now, we want to show what mortgages they were.

Mr. ARNOLD.—If we're going into those mortgages then I'm going into the validity of those mortgages. The only thing I asked the witness was with reference to the additional loan of \$300. He said that the discount committee met for the purpose of considering *large* transactions, and this *large* transaction which this discount committee had met and gone into was a measley loan of \$300, because they had loaned everything else up to then, and to bring out the good faith of this committee I ask if they were not—if there was not a previous loan that was secured and that the only loan was \$300.

Mr. O'CONNOR.—The other, the previous loan had been secured by mortgage. You brought [231] that out yourself.

Mr. ARNOLD.—I brought that out on this question of the necessity and the purpose of the meeting of this loan committee.

Mr. O'CONNOR.—That he took a mortgage is not an unusual thing. That the indebtedness, at least part of it, had been secured previously by mortgages, and mortgages become due. Just exactly the same as any bank will take new notes, take new mortgages to secure notes that have been theretofore secured by mortgages, the note and indebtedness secured by the mortgage having become due. To show there

(Testimony of J. Loving.)

It was nothing unusual about it, requiring security at that time, which was the ordinary transaction done in the usual and ordinary way.

The COURT.—Wouldn't be a question of attacking the good faith of the bank in that transaction.

Mr. O'CONNOR.—That is evidently one of the purposes of this hearing, was it a fact that at the time of the execution of this mortgage, the conditions were such that the bank knew he was in financial difficulties and in order to make itself secure, take this mortgage? On the other hand, it seems to me we should be entitled to show the circumstances leading up to the mortgage and show that the debt had been previously [232] secured by other mortgages. Then they were all put together into one large note, everything he had as security was put in there for the payment of the large note.

The COURT.—That is the testimony, the way it stands now. Now, as to what security was covered.

Mr. O'CONNOR.—Exactly, and the nature of the security to show that it was a usual and orderly business-like transaction, instead of a hurried-up affair to get security for a debt that was not likely to be paid, which had theretofore been unsecured, and to get a preference over other creditors, etc.

The question was read.

Mr. ARNOLD.—I make the additional objection that the security in writing is the best evidence.

Mr. O'CONNOR.—They were mortgages, Mr. Arnold. We wish to show this was not a hurried-up affair, and it was not an unusual transaction.

(Testimony of J. Loving.)

The COURT.—I tell you, gentlemen, I cannot see how it can possibly be material at all, in so far as I would be concerned. In considering the matter I would not consider it as material, because I cannot see how it can be. I have taken the position all along that where there is any doubt about [233] it here at all, I've had the—let the evidence go in. If you do not go too far into the matter I will allow the evidence to be considered. But I cannot see for the life of me how it is going to be material. My theory of the case is, gentlemen, there was a deal made——

(After further argument it was said by ——)

The COURT.—The objection will be sustained.

To which ruling of the Court, an exception was duly reserved. [234]

Testimony of E. J. Moe, for Petitioner (Recalled).

E. J. MOE, called as a witness, having been previously duly sworn, upon examination testified as follows:

Direct Examination by Mr. CAMPBELL.

Q. Were you present in the courtroom when Mr. Arnold introduced in evidence checks labeled as exhibits from 1 to 45, I believe, said checks representing payments made by Mr. Russell to various persons? A. I was.

Q. Were all those checks passed on by you when they came into the bank for payment?

A. They were not.

Q. Was the majority of them? A. No, sir.

(Testimony of E. J. Moe.)

Q. There were some, however, were there not, which passed through your hands?

Mr. ARNOLD.—That is objected to on the ground that it is incompetent and indefinite, unless his attention is drawn to the particular checks.

The COURT.—Oh, I don't know what you're trying—what the point is, but go ahead and answer the question.

To which ruling of the Court, an exception was duly reserved.

A. If they were passed through my hands, there were very few of them and I would not be able to say which ones they were. [235]

Q. Now, did any of the checks that passed through your hands, was there any notation or other indication that you could discern from the checks that would indicate to you that the money—the account of Mr. Russell was being dissipated away from the lumber business which he was conducting?

Mr. ARNOLD.—That is objected to on the ground that it calls for a conclusion of the witness. The question is one for the Court, whether it would—whether it had or whether it—

The COURT.—The objection is sustained on the ground of calling for the conclusion of the witness.

To which ruling of the Court, an exception was duly reserved.

Q. Did you have any notice of any kind during the lien of this mortgage that any of the funds derived by Mr. Russell from the proceeds of his

(Testimony of E. J. Moe.)

lumber business were being dissipated or wrongfully used?

Mr. ARNOLD.—Just a moment; that is objected to on the ground that it calls for the conclusion of the witness. The question is one for the Court, whether this witness as an officer of the bank had notice, or whether the funds were dissipated or being wrongfully used—from the evidence.

The COURT.—The objection will be sustained, for this reason, gentlemen. I take it the [236] only question here in dispute is, the only question that would be proper to ask would be his knowledge of any relations of the terms of that mortgage and be specific and state according to the terms of that mortgage whether any money was being paid for any other purpose other than agreed in that mortgage. I think that question pertinent, following this strictly and the mortgage. I don't think it would be fair to say this witness could draw his conclusions as to whether it was unlawfully diverted or otherwise. It seems to me it would be proper that he can state with reference to any moneys that were paid by Mr. Russell contrary to the provisions of the mortgage and confine yourself strictly to those provisions.

Q. Well, do you know of any funds that was paid out by Mr. Russell subsequent to the execution of the chattel mortgage in question that would be contrary to the provisions of the mortgage?

Mr. ARNOLD.—That is objected to on the ground that it is incompetent, irrelevant and immaterial.

(Testimony of E. J. Moe.)

In the first place he hasn't shown that he knows what the provisions of the chattel mortgage are. It calls for the conclusion of the witness on a question of fact, and also on a question of law. [237]

The COURT.—Yes, it's objectionable in that it is calling for the conclusion of the witness.

Mr. O'CONNOR.—Q. You're familiar with the provisions of this mortgage, Mr. Moe?

A. Yes, sir.

Q. According to the terms of the mortgage, he was to pay over to the bank any funds that were left from the proceeds of the sale of his stock and merchandise after deducting the actual and necessary expenses of carrying on said lumber business, actual and necessary living expenses of the party of the first part, Mr. Russell, and after deducting enough to pay bills falling due for goods purchased to replenish said stock under the permission as hereinafter given; and further given the right to buy new supplies of coal, lime, cement, paints, oils, lumber and building materials—

Mr. ARNOLD.—Well, just a moment, I object to the counsel telling the—

Mr. O'CONNOR.—I'm simply reading the provision of the mortgage.

—for cash or its equivalent, to replenish and keep up said stock now on hand. Now, then, do you know of any funds that Mr. Russell received from the sale of any goods that he had on hand after making the deductions that were provided for under the terms of the mortgage?

(Testimony of E. J. Moe.)

Mr. ARNOLD.—That is objected to on the ground that it calls for the conclusion of the [238] witness. It has not been shown that the witness knows of what deductions were made pursuant to the terms of the chattel mortgage. It has not been shown that the witness knows what funds he had on hand. He can't come in here and simply say that he does not know and put a halo of glory around himself and his bank by sitting there and saying he didn't know. The question is what were the acts of these parties. That is a question for the Court. I object because it calls for the conclusion of the witness as to a matter of law, and a conclusion of fact of the witness. It is suggestive, leading, incompetent, irrelevant and immaterial.

The COURT.—Now, gentlemen, Mr. Moe testifies that he is acquainted with the terms of the mortgage, and he testifies that he is acquainted with the way the money was disbursed, going through his bank. Now, the question is, does he know whether there was any money paid out other than was to be paid out under the terms of that mortgage. Isn't that substantially the question?

Mr. O'CONNOR.—The question is, if the Court please, if he knows of any funds that were left after the payment of these various deductions. It's just a little different [239] than your Honor put the question. Then my next question would be if he did know, do you know of his using them for any purposes contrary to the provisions of the mortgage.

The COURT.—The objection will be overruled.

(Testimony of E. J. Moe.)

To which ruling of the Court an exception was duly reserved.

A. There were not.

Q. Then having been no funds, they could not have been applied for other than the provisions of the mortgage?

Mr. ARNOLD.—That is objected to on the ground that it is argumentative. That is a question for the Court.

Mr. O'CONNOR.—It may be leading, but—

Mr. ARNOLD.—It's leading and argumentative.

Mr. O'CONNOR.—I'll change the question.

Q. If there were no funds left after the deductions provided for by the terms of the mortgage, could he have applied any funds contrary to the provisions of the mortgage?

Mr. ARNOLD.—That is objected to on the same ground, that it is leading, suggestive, argumentative and calling for the conclusion of the witness. It's a matter for the Court to pass on. Whether he could or could not.

The COURT.—Well, I think its objectionable. The objection will be sustained. [240]

To which ruling of the Court, an exception was duly reserved.

Cross-examination by Mr. ARNOLD.

Q. When you say there were no funds, you mean there were no funds as far as you know other than what went through the bank—is that it?

A. No funds to be applied on our bank after he

(Testimony of E. J. Moe.)

took care of what he had to pay—his running expenses, etc.

Q. That is what you mean when you answer that question—is it?

A. He had no funds to apply on the mortgage.

Q. You mean after he had disposed of the moneys that went through your bank—

Mr. O'CONNOR.—In accordance with the terms of the mortgage.

Mr. ARNOLD.—Well, let me ask my question. When I ask you to make some additions to my questions, I'll let you know.

Q. —disposing of them, is what you mean by that? After he withdrew the money from your bank, after he did that, then he had no funds to apply.

Mr. O'CONNOR.—That is, according to the terms of the mortgage.

Mr. ARNOLD.—If your Honor please, I object to counsel suggesting and—

Mr. O'CONNOR.—I'm not suggesting anything. You are balling your question up so that the [241] witness don't know what you're driving at.

Mr. ARNOLD.—Well, you let the witness take care of himself.

A. After he withdrew his money he wouldn't have no funds.

Q. There was nothing to apply on your mortgage? That's what you mean?

A. He did not have any after he'd deducted the expense of the yard, purchases, etc.

Q. He did not? A. No, sir.

(Testimony of E. J. Moe.)

Q. How do you know?

A. He stated so a great many times.

Q. That is the only intimation you have about it?

A. Yes.

Q. You're not speaking then—

Mr. O'CONNOR.—Wait a minute and let the witness answer the question.

Mr. ARNOLD.—Well, now, just wait a second and—

Mr. O'CONNOR.—I say let the witness answer the question and quit shaking your finger so until he gets through.

The COURT.—Proceed gentlemen.

The last question and answer was read.

Mr. ARNOLD.—The question has been answered.

Mr. O'CONNOR.—All right. It was my opinion that he had not finished.

Q. You're not speaking of your own personal knowledge then? A. I am. [242]

Q. Where do you get it from?

A. From the books.

Q. From what books, Mr. Moe?

A. From the bank books.

Q. You mean from that ledger account in the bank? A. Yes, sir.

Q. That is all you're speaking from—is that it?

A. Yes, sir.

That is all.

Redirect Examination by Mr. O'CONNOR.

Q. Did you know anything about his system of bookkeeping? A. No.

That is all. [243]

Testimony of W. N. Russell, for Petitioner.

W. N. RUSSELL, called as a witness on behalf of the bank, having previously been duly sworn, upon examination testified as follows:

Direct Examination by Mr. CAMPBELL.

Q. Now, you testified yesterday I think it was, Mr. Russell, that you derived an income from the proceeds and sales of lumber in the yard at Springdale, and that this money was deposited in the bank with the general pot, as you put it. Now, then, I will ask you if you know or can estimate approximately the average net proceeds per month from your sales in the Springdale yard. A. Yes, sir.

Q. About how much per month was derived from that source?

A. I estimated the returns of the Springdale moneys, after expense of running there, would average \$175 a month.

Q. That was net profit then on that yard.

A. No, that was the net returns from the sales after deducting the cost of the handling of it there.

Q. That would be a net proceed then, wouldn't it?

A. No. The cost of the lumber had to come out of that. Other expenses were taken out of that.

Q. Oh, you mean that \$175 a month would be the gross amount after deducting the expenses?

A. Yes, sir. [244]

Q. And approximately then that much each month was deposited in the,—your account in the bank?

A. It was.

Q. From the sales at Springdale? A. It was.

(Testimony of W. N. Russell.)

Q. I want to call your attention to the provision in the mortgage which reads as follows: During the continuance of this mortgage, or the extension thereof, account to the party of the second part for all sales and collections made during the previous month, and pay over to the party of the second part at such times of accounting the proceeds of all such sales and collections, to apply toward the payment of said promissory note, after deducting the actual and necessary expenses of carrying on said business of lumber dealer, and the actual and necessary living expenses of the party of the first part, and after deducting enough to pay bills falling due for goods purchased to replenish said stock under the permission hereinafter given. And I will ask you if you had money left after making the deductions which are provided for in this mortgage. A. No.

Mr. ARNOLD. — Wait a minute. Are you through with your question? I don't know when you're through or whether you're just starting in.

Mr. CAMPBELL.—Well, that's better than going all the time like you do. [245]

Mr. ARNOLD.—Are you through with your question? If so, I ask that the answer be stricken out until I have an opportunity to object.

Mr. O'CONNOR.—Just a minute,—

Mr. CAMPBELL.—I'll supplement the question by adding to it, "Derived from the sales made in your lumber business."

Mr. ARNOLD.—I thought there would be a supplement. I move that the answer be stricken out.

(Testimony of W. N. Russell.)

The COURT.—Yes, strike it out.

The question was read.

Mr. ARNOLD.—Now, I object to the question on the ground that it calls for the conclusion of the witness, is indefinite as to what deductions are referred to; has already been gone into on the previous examination of this witness, and for the further reason that it calls for his legal conclusion and his conclusion as to questions of fact; and for the further reason that the books themselves, or whatever he has got in the way of books, are the best evidence.

The COURT.—I'll say this, gentlemen, I consider that is the exact question we're in dispute over here, that question partly means this: Has he complied with the terms of the mortgage?

Mr. ARNOLD.—It's not for him to say.

Mr. O'CONNOR.—Not necessarily, if the Court please, but did he have anything to comply [246] with the terms of the mortgage with? If he did not have, why, of course, he is not responsible.

The COURT.—I think that it would be incompetent for the witness to state whether he'd applied, or whether he'd had anything— Its certainly a deduction that he's got to draw from the facts. The testimony now is here, gentlemen,—shows his whole course of conduct and whole business affairs all the way through. Testifies as to what he has done. The books are all in evidence, the accounts are all here. That is as far as it could be done to put it before the Court. As it is here now, if you want to ask him what he did as to his system, and what he did, why I

(Testimony of W. N. Russell.)

think that would be admissible, but not—,

Mr. O'CONNOR.—Now, for instance, not interrupting the Court, but taking the fact of living expenses. Who is there to know as to what he used for his living expenses except himself? He may have taken cash out of the drawer and paid some bills. He may have paid them by giving them some merchandise as is frequently done. There is not any one who would know what the deductions are which should be made here for living expenses but himself, and there is no testimony in the record that would [247] assist the Court in determining what he used for living expenses. Of course as to the carrying on of the other business, making the other deductions, I think there is testimony enough to enable the Court to decide that. What is in the case so far to say whether or not that he made proper deductions for living expenses? Don't you think he should be permitted to testify after paying your living expenses and after paying the—keeping up your stock, as you did keep it up, and after paying the expenses of running your business, did you have any funds left upon which to make a payment, with which to make a payment upon this? There is not any one who is in a better position to testify to that fact. That is no conclusion, that is a fact. There is no one in a better position to tell that but the man conducting the business. If he says he did not have and if he says he did have, it doesn't make any difference how he answers the question. Then of course it can be gone into on cross-examination. Its the ultimate fact,

(Testimony of W. N. Russell.)

did he have any funds after making these deductions that were deducted with or without the knowledge of the bank. If there were no funds, if his business did not pay after making the deductions, of course [248] there could not be anything to apply on the note. Who would know that better than the man himself? It seems to me he should be allowed to answer the question. At least it wouldn't do any harm. The Court will at least have his idea about whether or not he had any funds, and will have his idea upon the question of deductions for his living expenses. There's not anything in the record about that yet.

The COURT.—No, I think that it is objectionable. I would suggest this, Mr. O'Connor. If you want to get it so that it can be reviewed, I suggest you make an offer of that proof.

Mr. O'CONNOR.—We want to get the proof in.

The COURT.—If it is appealed, the reviewing Court will say whether the admission was right or wrong, or the exclusion was right or wrong. It strikes me that matter is now all in the evidence, the whole thing in evidence. And now you're asking this man this question after you've covered it all, Did you comply with the terms of the mortgage? Virtually that is the substance of the question.

Mr. O'CONNOR.—Did you have any funds with which to apply on it?

The COURT.—Yes, and did you have any funds with which you could apply? [249]

Mr. O'CONNOR.—Then, if you didn't have, then of course you could not have made a payment with

(Testimony of W. N. Russell.)

something you did not have, and who is in a better position to judge whether or not he did than himself?

The COURT.—He has already stated to us, Mr. O'Connor, just what he did. No, the objection will be sustained.

To which ruling of the Court, an exception was duly reserved.

Q. Did you at any time subsequent to the execution of this chattel mortgage and prior to your failure, spend any money for living expenses that was unnecessary? A. No; not that I know of.

Q. Now, then, during the pendency of the lien of this mortgage and prior to the filing of the petition in bankruptcy, was any suit or suits brought against you on behalf of creditors or by creditors?

Mr. ARNOLD.—Just a moment, that is objected to as incompetent, irrelevant and immaterial.

The COURT.—Just a moment, what did you want to show by that?

Mr. CAMPBELL.—I want to show that he was—

The COURT.—To show that he was—his financial condition was bad, that they were attaching him and all that? If you wanted to go into that—

Mr. O'CONNOR.—We want to show that lots of times [250] solvent people are attached by people who are anxious, perhaps, to make attorney's fees, etc. We want, first, to show that the man in his own judgment was solvent. Second, that people were pouncing onto him and that if he'd been left alone and was conducting the business to-day the creditors would have all gotten their money. Of course he was

(Testimony of W. N. Russell.)

thrown into bankruptcy and the result is that nobody will get their money. By reason of the fact that he was attached and was thrown into bankruptcy.

The COURT.—Well, of course, Mr. O'Connor, you wouldn't urge that that would be material, and competent, to show that if he'd been let alone that he would have gone on and worked out of this. That would be clearly a piece of guess work.

Mr. ARNOLD.—In other words, if he'd been allowed to go on and if he'd been let alone, the bank would have gotten its money and we wouldn't have heard anything about this.

Mr. O'CONNOR.—Other creditors would have gotten their money too, if he had been let alone.

The COURT.—To go into his financial condition you may answer the question.

Mr. ARNOLD.—Just a moment, what is the question?

The question was read to the Court.

Mr. ARNOLD.—That is objected to on the ground that it is incompetent and irrelevant and [251] immaterial. The record itself is the best evidence of—

Mr. O'CONNOR.—He knows whether he was sued or not.

The COURT.—I understood, Mr. Campbell, that your question was—antedated the giving of this mortgage. That was what I had in mind. I supposed—I cannot see that anything that was said after this mortgage was given is material at all. If

(Testimony of W. N. Russell.)

it's after the mortgage, why it don't seem to me to be competent at all. I supposed it was prior to the giving of this mortgage.

Mr. O'CONNOR.—No, we wouldn't be insane enough to show anything of that kind.

The COURT.—My theory of the case would be that that would be immaterial. You can make your offer of proof if you care to. The objection will be sustained to anything that transpired since the giving of the mortgage, showing his financial condition; other than to attack the good faith of the bank, in taking the mortgage, or something of that sort; or unless you show it was done with the actual knowledge of the bank, I don't think any attachment brought since is material at all. If you care to make an offer of proof you may do so and it will be considered on review.

Mr. CAMPBELL.—I think that is all. [252]

Cross-examination by Mr. ARNOLD.

Q. Mr. Russell, with reference to this Springdale business, you simply had this Springdale business as an adjunct to your Big Timber business—didn't you?

A. Well, it was a business in itself.

Q. Yes; but there was no—you did not give your attention to it?

A. Yes. And according to the investment Springdale was the best asset I had.

Q. Oh, it was. You sent merchandise from your yard at Springdale—at Big Timber to Springdale?

A. I shipped in there direct.

Q. And you also shipped from Big Timber, didn't

(Testimony of W. N. Russell.)

you, Mr. Russell? A. I did.

Q. And every thing in the way of bills was sent to your office at Big Timber—wasn't it? All of the charges for merchandise that went to Springdale were charged to you at Big Timber?

A. No, they were not. If a man handling that for me was handling it on a percentage, what I shipped there was charged to Springdale.

Q. Did you keep a separate account with your Springdale business?

A. Yes, sir. We have the slips from Springdale separate from all the rest.

Q. That would be of your sales?

A. Yes, sir. [253]

Q. But you did not keep a separate set of books at Springdale, did you?

A. Well, I keep no books—kept no books at any place. Amongst those packages you have from Springdale I think you will find the freight bills and cost bills of the stuff that went in there. They were always deducted right there at Springdale.

Q. Who run the business at Springdale?

A. William Muir.

Q. He got, did he not, a percentage?

A. Yes, sir.

Q. For running the business? A. Yes, sir.

Q. What was that percentage?

A. Ten per cent.

Q. Of what?

A. Ten cents on the dollar; on the sales.

Q. On his sales. Now, then, all he had to do was

(Testimony of W. N. Russell.)

to account to you for the sales,—wasn't it?

A. No, sir; it was not.

Q. What did he have to do?

A. He had to keep the lumber in order there. See that nothing went to waste, and anything that was shipped he had to take care of it and he paid for it out of Springdale money himself.

Q. He paid for what with Springdale money himself?

A. Anything I shipped him from Big Timber.

Q. In other words, if you sent him material from Big Timber, he sent you the money for it—did he?

A. I—no; he did not send it to me. I went [254] the first of the month, between the first and the 10th, of every month, and we had our accounting then.

Q. And he gave you whatever money he had on hand?

A. Yes. He kept books, he showed by his books what he had paid for and it was taken out of what he had collected for me, on the sales. Of course, what I shipped him was only in the line of doors, windows, paper, and now and then a little lumber; but the lumber end of it there was shipped in direct; in carload lots.

Q. From whom?

A. That was all native stock; from F. E. Russell. Now, then, you did not mean to say, did you, Mr. Russell, that when a carload of this native stock came to Springdale from F. E. Russell, that Mr. Muir mailed to F. E. Russell a check for that carload of lumber?

A. No, sir. I said what I shipped him from Big

(Testimony of W. N. Russell.)

Timber yard he paid for. Whenever a carload come in I had that to take care of.

Q. And the proceeds of the car of lumber would go to you, less ten per cent, when you had your monthly accounting with Mr. Muir? A. It did.

Q. And wherever this carload of lumber came from it would be taken care of in just that way, the payment of it. It would be taken care of by you. He would sell it and at the end of the month the proceeds of the sales would be sent, would be [255] delivered to you less ten per cent for the handling of it? A. Yes, sir.

Q. Now, then, if you delivered or sent any building material of any kind from Big Timber, at the end of the month that would come back to you in the way of the amount less his ten per cent for handling it, wouldn't it? A. Yes, sir.

Q. And that is the way it was handled?

A. Yes, sir

Q. Now, then, when you say that you were in receipt each month of approximately \$175 from Springdale, you mean that that was after the ten per cent was deducted, and after you had footed all the bills or had everything charged to you that had gone to Springdale at Big Timber? A. Yes.

Q. And the merchandise that you sent from Big Timber might be merchandise—would be merchandise that was covered by that chattel mortgage, if it was necessary to send it to Springdale?

A. That would be; yes.

That is all.

Mr. CAMPBELL.—That is all, I believe, we have,
your Honor. [256]

E. M. NILES,
Referee in Bankruptcy. [257]

United States of America,
State of Montana,
County of Park,—ss.

**Certificate of Referee in Bankruptcy to Transcript
of Proceedings and Evidence.**

I, E. M. Niles, do hereby certify that I am the duly appointed Referee in Bankruptcy residing in Livingston, Park County, Montana, and that as such referee in Bankruptcy I have had charge of the proceedings in the matter of W. N. Russell, doing business under the name and style of W. N. Russell Lumber Company, and W. N. Russell as an individual; that the foregoing transcript is a full and complete transcript of the proceedings and evidence had in connection therewith.

E. M. NILES,
Referee in Bankruptcy. [258]

[Endorsed]: No. 2016. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of W. N. Russell, Bankrupt. The Scandinavian American Bank of Big Timber, Montana, a Corporation, Petitioner, vs. John G. Ellingson, Trustee for the Bankrupt, W. N. Russell, Doing Business Under the Name of W. N. Russell Lumber Company and W. N. Russell, as an Individual, Respondent. Transcript of Record in Support of Petition for Revision.

Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in the Matter of Law, a Certain Order of the United States District Court for the District of Montana.

Filed July 3, 1917.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

